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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, ~~1901~~ 1902.

No. ~~368~~ 131.

FELIX M. HANLEY, JEREMIAH G. WALLACE, AND HENRY W. WELLS, COMMISSIONERS AND MEMBERS OF THE RAILROAD COMMISSION OF ARKANSAS, APPELLANTS,

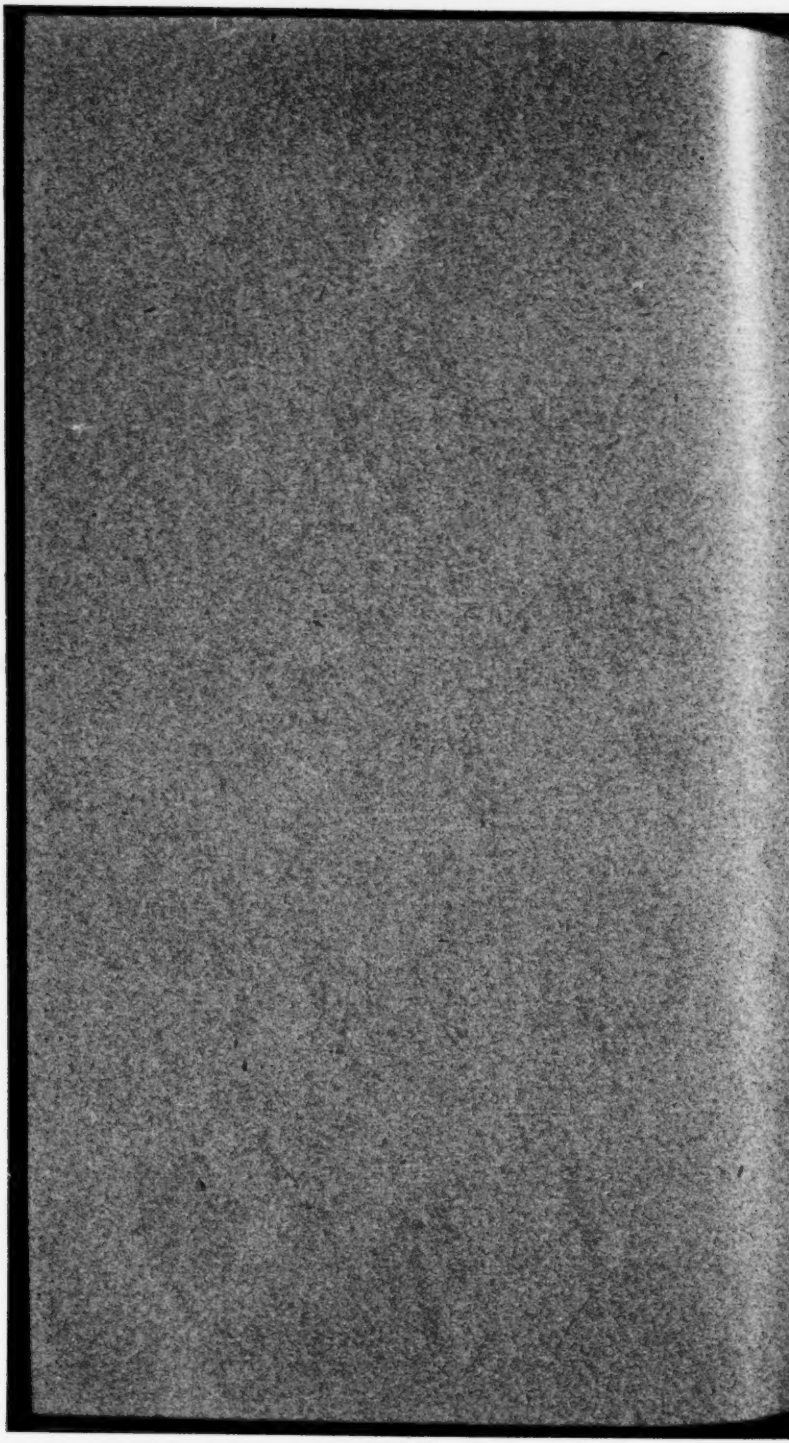
vs.

THE KANSAS CITY SOUTHERN RAILWAY COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ARKANSAS.

FILED JULY 13, 1901.

(18,221.)



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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JANUARY 9, 1902.

1 Be it remembered that on the 3rd day of October 1900, came into the office of the clerk of the circuit court of the United States for the western division of the eastern district of Arkansas, the Kansas City Southern Railway Company by Lathrop, Morrow, Fox and Moore Read and McDonough and C. W. Lucas, Esqs., its solicitors and filed on the chancery side of said court its bill of complaint against Felix M. Hanley, Jeremiah G. Wallace and Henry W. Wells, commissioners and members of the railroad commission of the State of Arkansas which is in the words and figures following to wit:

In the Circuit Court of the United States for the Western Division of the Eastern District of Arkansas.

THE KANSAS CITY SOUTHERN RAILWAY COMPANY *vs.* FELIX M. HANLEY, JEREMIAH G. WALLACE, and HENRY W. Wells, Commissioners and Members of the Railroad Commission of State of Arkansas.	1336.

Original Bill of Complaint.

To the honorable judges of the circuit court of the United States for the eastern district of Arkansas, sitting in equity:

Your orator The Kansas City Southern Railway Company, a railroad corporation duly created, organized and existing under and by virtue of the laws of the State of Missouri, and a citizen of
2 said State of Missouri brings this its bill of complaint against Felix M. Hanley, Jeremiah G. Wallace and Henry W. Wells, commissioners and members of the railroad commission of the State of Arkansas, all citizens and residents of the State of Arkansas, and all of whom are residents and inhabitants of the eastern district of Arkansas.

And thereupon your orator represents and says that your orator is a railroad corporation duly created, organized and existing under and by virtue of the laws of the State of Missouri, and having its principal office in Kansas City, in the State of Missouri, and is a citizen and resident of the State of Missouri; that Felix M. Hanley is a citizen and resident of the State of Arkansas and a resident and inhabitant of the eastern district of Arkansas; that Henry W. Wells is a citizen and resident of the State of Arkansas and is a resident and inhabitant of the eastern district of Arkansas; that Jeremiah G. Wallace is a citizen and resident of the State of Arkansas, and a resident and inhabitant of the eastern district of Arkansas.

Your orator further represents unto your honors that it is a common carrier of passengers and freight, and as such owns or controls, maintains and operates a line of railroad extending and running from Kansas City in the State of Missouri, to Ogden, on the State or eviding line between the State of Texas and the State of Arkansas,

and other lines as hereinafter set forth; that said line of railroad in going from said Kansas City to said Ogden traverses parts of the following States and Territories, viz: Missouri, Kansas, Arkansas and Indian Territory; that the route of said railroad is more particularly set forth as follows: viz: That it begins at Kansas City in the State of Missouri, and traverses or runs through
3 the following counties in the State of Missouri, viz: Jackson, Cass, Bates, Vernon and Barton to the State or dividing line between Missouri and Kansas; thence through the counties of Crawford and Cherokee, in the State of Kansas to the State or dividing line between Kansas and Missouri thence through the counties of Jasper, Newton and McDonald, in the State of Missouri, to the State or dividing line between the State of Missouri and the State of Arkansas; thence through the counties of Benton and Washington, in the State of Arkansas, for a distance of, to wit, 28.649 miles to the dividing line between the State of Arkansas and the Indian Territory; thence through the Indian Territory for a distance, to wit, of 127.781 miles to the State or dividing line between the Indian Territory and the State of Arkansas, where the Indian Territory adjoins the county of Polk, in the State of Arkansas; and on said line of railroad located in the said Indian Territory there are various stations or depots to the number of thirty and in said Indian Territory there are five junction points where freight and passengers are exchanged and transferred from other lines of railroad to that of your petitioner; thence through the counties of Polk, Sevier and Little River, in the State of Arkansas, for a distance of to wit, 117.618 miles, to the State or dividing line between the States of Arkansas and Texas; that your orator has a branch line of railroad running northeastwardly from Spiro, in the Indian Territory, to Fort Smith in the State of Arkansas, a distance of, to wit, 16 miles, about 15 miles of which distance is in the Indian Territory and about one mile of which is in the State of Arkansas; that the distance from Spiro to the State or dividing line between Arkansas
4 and Indian Territory is 48.745 miles; that the distance from the State or dividing line between Arkansas and Indian Territory to Grannis Arkansas is 52.155 miles; that your orator has, in Little River county in the State of Arkansas, a branch line of railroad running from Wilton northeastwardly to White Cliffs, a distance of about to wit 6 miles; and that at the said State or dividing line between the said States of Arkansas and Texas, the line of railroad owned or control-ed maintained and operated by your orator, as aforesaid connects with the line of railroad of the Texarkana and Fort Smith Railway Company, a railroad corporation duly created, organized and existing under and by virtue of the laws of the State of Texas; that said line of railroad of the said Texarkana and Fort Smith Railway Company traverses and extends through the counties of Bowie and Cass, in said State of Texas for a distance of to wit, 31.54 miles, to the State or dividing line between the county of Cass, in said State of Texas, and the county of Miller in the State of Arkansas; that at said State or dividing line between said county of

Cass, in said State of Texas, and said county of Miller, in said State of Arkansas, the said line of railroad of the said Texarkana and Fort Smith Railway Company again connects with the line of railroad owned or controlled, maintained and operated by your orator; that said line of railroad so owned or controlled, maintained and operated by your orator traverses and extends through the said county of Miller, in said State of Arkansas, for a distance of to wit, 6.429 miles, to the State or dividing line between the State of Arkansas and the State of Louisiana; thence through the said State of Louisiana to the State or dividing line between the
State of Louisiana and the State of Texas; that at the said
5 State or dividing line between said State of Louisiana and
Texas, the said line of railroad so owned or controlled, maintained and operated by your orator, as aforesaid, connects with another portion of the line of railroad of the aforesaid Texarkana and Fort Smith Railway Company; that said line of railroad of the said Texarkana and Fort Smith Railway Company travers- and extends from the said State or dividing line between said States of Louisiana and Texas as aforesaid, to Port Arthur, in the county of Jefferson in said State of Texas, where the southern terminal is located of the system of railroads known and designated as the "Port Arthur route," composed of the lines of railroad owned or controlled, maintained and operated by your orator and the said Texarkana and Fort Smith Railway Company, as hereinbefore fully set forth.

Your orator further represents that there are located upon that portion of the line of railroad owned or controlled, maintained and operated by your orator as aforesaid, which traverses and extends through the counties of Benton and Washington, in said State of Arkansas, as aforesaid, certain places or stations, known as shipping points, to and from which freight is shipped, as follows, to wit: Wye, Sulphur Springs, Gravette, Decatur, Doubling Track, Gentry and Siloam Springs; that Fort Smith which is also a shipping point, is situated at the northeast extremity of said branch of your orator's line of railroad extending, as hereinbefore set forth, from Spiro, in the Indian Territory to said Fort Smith, said Fort Smith being situated about one mile eastwardly in the State of Arkansas from the line dividing the said State of Arkansas from the said Indian Territory; that there are located upon that portion of the line of
railroad owned or controlled, maintained and operated by
6 your orator, as aforesaid, which traverses and extends through
the counties of Polk, Sevier and Little River, in said State of Arkansas, as aforesaid, certain places or stations, known as shipping points, to and from which freight is shipped as follows, to wit:— Howard, Rich Mountain, Harris, Rock Quarry, Quigley's, Eagle Gap Quarry, Acorn, Mena, Rust, Pryors, Two Mile Spur, Hatfield, Cove, Rock Crusher, Jansen, Hatton, Bowmans, Wickes, Womacks, Granniss, Ryders, Moores, Kinneys, Gillham, Kings, Pullman, Avon, Colemans, De Queen, Burlingame, Horatio, L. R. V. Crossing, Neal Springs, Morris Ferry, Logs Spur 1, Jackson Spur, Winthrop, Log Spur 2, Allene, Log Spur 3, otherwise known as Mistletoe, Wilton,

White Cliffs, Rankin, Ashdown, Hudson, and Ogden; that there is located upon that portion of the line of railroad owned or controlled, maintained and operated by your orator, as aforesaid, which traverses and extends through the county of Miller, in said State of Arkansas, as aforesaid a certain place or station, known as a shipping point, to and from which freight is shipped, and which is known and designated as Ravana; that whenever freight is shipped or transported from any of the aforesaid shipping points, in either of the said counties of Benton or Washington, in said State of Arkansas to Fort Smith, or to any of the aforesaid shipping points in either of the counties of Polk, Sevier or Little River, in said State of Arkansas, as aforesaid, said shipment must of necessity pass over a portion of your orator's line of railroad in the Indian Territory, as hereinbefore set forth; that whenever freight is shipped or transported from any of the aforesaid shipping points in either of the said counties of Benton or Washington, in said State of Arkansas, to Ravana, in said county of Miller, in said State of Arkansas,

7 such shipment must of necessity pass over that portion of the line of railroad of your orator, traversing and extending through the Indian Territory, as aforesaid, and also over that portion of the line of railroad of the said Texarkana and Fort Smith Railway Company, traversing and extending through the counties of Bowie and Cass, in the State of Texas, as hereinbefore set forth; that whenever freight is shipped or transported from Fort Smith to any of the aforesaid shipping points in either of the said counties of Benton or Washington, in the said State of Arkansas, as aforesaid, or to any of the aforesaid shipping points in either of the said counties of Polk, Sevier or Little River, in said State of Arkansas, such shipment must of necessity pass over a portion of your orator's line of railroad in the Indian Territory, as hereinbefore set forth; that whenever freight is shipped or transported from said Fort Smith to said Ravana, in said county of Miller, in said State of Arkansas, such shipment must of necessity pass over a portion of your orator's line of railroad, traversing and extending through the Indian Territory and the counties of Polk, Sevier and Little River, in said State of Arkansas, and also over that portion of the line of railroad of the said Texarkana and Fort Smith Railway Company traversing and extending through the counties of Bowie and Cass, in said State of Texas, as aforesaid; that whenever freight is shipped or transported from any of the said shipping points in either of the said counties of Polk, Sevier or Little River, in said State of Arkansas, to any of the said shipping points in either of the said counties of Benton or Washington, in said State of Arkansas, or to said Fort Smith, such transportation must of necessity pass over a

8 portion of your orator's said line of railroad traversing and extending through the Indian Territory, as hereinbefore set forth; that whenever any freight is shipped or transported from any of the said shipping points in either of the said counties of Polk, Sevier or Little River, in said State of Arkansas, to said Ravana, in said county of Miller, in said State of Arkansas, such shipment must of necessity pass over a portion of the line of railroad of the

said Texarkana and Fort Smith Railway Company traversing and extending through the counties of Bowie and Cass, in the said State of Texas, as hereinbefore set forth; that whenever freight is shipped or transported from said Ravana, in said county of Miller, in said State of Arkansas, to any of the shipping points in either of the counties of Polk, Sevier or Little River, in said State of Arkansas, such shipment must of necessity pass over that portion of the line of railroad of the Texarkana and Fort Smith Railway Company traversing and extending through the counties of Bowie and Cass, in said State of Texas, as hereinbefore set forth; that whenever any freight is shipped or transported from said Ravana to said Fort Smith, or to any of the aforesaid shipping points in either of the counties of Benton or Washington, in said State of Arkansas, such shipment must of necessity pass over that portion of the line of railroad of the said Texarkana and Fort Smith Railway Company traversing and extending through the counties of Bowie and Cass, in said State of Texas, as hereinbefore set forth; and also over that portion of your orator's line of railroad traversing and extending through the Indian Territory, as hereinbefore set forth.

Your orator further represents that it is a common carrier for hire and engaged in the carriage and transportation of persons
9 and property along the entire line of your orator's said railroad, and each and every part thereof, and to and from all stations thereon; that for the transportation of freight from any of the aforesaid shipping points in the State of Arkansas, to any of the aforesaid shipping points in the State of Arkansas, where the shipment passes over your orator's aforesaid line of railroad in the Indian Territory, or a portion thereof, the rate charged for such service includes the charge for that portion of the service rendered in the Indian Territory; that such rates so charged are within the limits and bounds of those permitted by the laws of the United States; that the said carriage and transportation of passengers and freight from any of the aforesaid shipping points in the State of Arkansas to any of the aforesaid shipping points in said State of Arkansas, where the passengers or shipment of freight pass over your orator's aforesaid line of railroad in the Indian Territory, or a portion thereof, or over the line of railroad of the said Texarkana and Fort Smith Railway Company in Texas, as aforesaid, constitute interstate commerce, and is under the exclusive jurisdiction of the Government of the United States and its laws, and is in no respect subject to or under the control of the State of Arkansas, its laws or its officers.

Your orator further represents that it is the successor and grantee of the Kansas City, Pittsburg and Gulf Railroad Company, a corporation duly created, organized and existing under and by virtue of the laws of the State of Missouri, with its principal office in Kansas City in said State of Missouri; that having purchased the property of the said Kansas City, Pittsburg and Gulf Railroad Company, at public sale, your orator took possession of the
10 same on April 1st, A. D. 1900, and that at all times subsequent thereto your orator has been in possession of and has

owned, controlled, operated and maintained the said property of the said Kansas City, Pittsburg and Gulf Railroad Company; that the line of railroad of the said Kansas City, Pittsburg and Gulf Railroad Company, so purchased and taken possession of by your orator as aforesaid, is the same line of railroad hereinbefore described and set forth as being owned or controlled, maintained and operated by your orator; that the said Kansas City, Pittsburg and Gulf Railroad Company acquired its right and authority to build that portion of the line of railroad now belonging to your orator, as hereinbefore set forth, which traverses and extends through the Indian Territory as aforesaid, by an act of Congress approved February 27th, A. D. 1893; that in and by said act of Congress, it is provided that "Congress hereby reserves the right to regulate the charges for freight and passengers on said railroad, and messages on said telegraph and telephone lines, until a State government shall be authorized to fix and regulate the cost of transportation of persons and freight within its respective limits by said railroad; but Congress expressly reserves the right to fix and regulate at all times the cost of such transportation by said railroad or said company whenever such transportation shall extend from one State into another, or shall extend into more than one State;" that the said Kansas City, Pittsburg and Gulf Railroad Company maintained and operated that portion of the line of railroad now owned or controlled, maintained and operated by your orator in the Indian Territory as hereinbefore set forth, under and by virtue of the said act of Congress; that your orator succeeded to, all
11 the properties and rights of the said Kansas City, Pittsburg and Gulf Railroad Company upon the purchase of the property of the said company as aforesaid, and is therefore entitled to all the rights and privileges granted to said Kansas City, Pittsburg and Gulf Railroad Company under and by the said act of Congress and is subject to the right so reserved by Congress to regulate the rates and charges over that portion of the line of railroad of your orator situated in said Indian Territory, as aforesaid; that your orator is now maintaining and operating its said line of railroad in the said Indian Territory, as aforesaid, under and by virtue of the said act of Congress; and your orator therefore represents that the rates charged for the transportation of freight shipped from any of the aforesaid shipping points in the State of Arkansas to any other of the said shipping points in the State of Arkansas, when said shipment passes over a portion of your orator's said line of railroad within the said Indian Territory, as aforesaid, are governed and controlled solely by the Government and laws of the United States, and are in no respect subject to or under the control of the State of Arkansas, its laws or its officers.

Your orator further represents that there was passed by the legislature of the State of Arkansas, and approved by the governor of said State of Arkansas, on March 11th, A. D. 1899, and which is still in full force and effect in said State of Arkansas, an act entitled "An act to provide for the regulation of railroad freight and passenger tariffs in this State, to prevent unjust discriminations and extortion

in the rates charged for the transportation of passengers and freight,
and to prohibit railroad companies, corporations and lessees
12 in this State from charging other that just and reasonable
rates, to punish the same and prescribe a mode of procedure
and rules of evidence in relation thereto, and to appoint commissioners and prescribe rules for their government and define their powers and duties in relation to the same;" that a copy of said act is hereto attached, marked Exhibit "A," and to which complainant prays leave to refer upon the hearing of this bill; that said act contains, among others, a provision as follows, namely:

"That a railroad commission is hereby created, to be composed of three persons, to be appointed by the governor until the next general election, being with the advice and consent of the General Assembly in joint session, one to be chosen from the first and sixth one from the second and third, and one from the fourth and fifth congressional districts, to carry out the provisions of this act and whose successors shall be elected at each general election thereafter, from the congressional districts as hereinbefore provided.

After the expiration of the terms of office of the commissioners first appointed, the terms of office of their successors shall be two years."

And also contains another provision as follows:

"The commissioners herein provided shall be appointed or elected as aforesaid, and shall be resident citizens of this State, and qualified voters under the constitution, and not less than twenty-five years of age. No one shall be appointed or elected as such commissioner who is directly or indirectly interested in any railroad in this State or out of it, or in any stocks, bonds, mortgages, security, or the earnings of any railroad; and if such commissioner shall become so interested he shall within a reasonable time divest himself of such interest; failing to do this his office shall be de-
13 clared by the governor to be vacant."

And also another provision as follows:

"The governor shall fill all vacancies in the office of commissioner by appointment, and the person so appointed shall fill out the unexpired term of his predecessor."

And also the following provision:

"Said commission may hold sessions at any place in the State when deemed necessary, to facilitate the discharge of their duties or for the convenience of the parties litigant."

And also the following provision:

"That every person or corporation operating any railroad or express business in this State is hereby required to furnish said commission, within fifteen days after notice to do so, with the rate sheet and tariff charges for transportation of every kind over such railroad, it shall be the duty of said commission to examine and revise said rate sheet and tariff charges for freight or express matter for each railroad in this State, and to determine whether or not and in what manner, if any, such charges and rates are more than just and reasonable compensation for the services rendered, and whether or not and in what manner, if any, said charges and rates are in

violation of the provisions of this act; and said commission will make reasonable and just rates of freight, express and passenger tariffs to be observed by all persons and corporations operating any railroad or engaged in transporting persons or property as express or freight in this State; shall make rules and regulations as to charges at any and all points for the necessary hauling and delivering of express and freight; regulate rate and charges for such service on all railroads as, in their judgment justice to the
14 public and said person or corporation may require; and so make the same conform to the requirements of this act. And said commission, in making such rules and regulations, shall first give the person or corporation to be effected thereby notice to appear and show cause, if any it can, why no change should be made in the rates then in force, and shall take into consideration the character and nature of the service to be performed, the entire earnings of any railroad or express company, the expense of operating the same, the income and value thereof."

And also another provision as follows:

"And all the provisions of this act shall apply to all property and all the services in and about the transportation thereof, on one actually or substantial continuous carriage, or a part thereof and to the compensation therefor whether the same is carried wholly on one railroad or partly on several railroads, and whether the services are performed, or compensation paid or received by or to one person or corporation alone or in connection with another, or other persons or corporations."

And also another provision as follows:

"That each and every act, matter or thing in this act declared to be unlawful is hereby prohibited; and in case any person or corporation, as defined in this act, engaged as aforesaid, shall do, or permit to be done, any act matter or thing in this act required to be done, or shall be guilty of any of the violations of the provisions of this act, such person or corporation shall be held to pay to the person firm or corporation injured thereby, double the amount of damages so sustained, and all costs, to be recovered by the person firm or corporation so damaged, in any court having jurisdiction of
15 the amount, where the person or corporation causing the damage can be found, or has an agent or place of business."

And also the following provision:

"It shall be the duty of the railroad commission to hear all complaints made by any person, firm or corporation against any such tariff or charges so approved; to hear the parties to the controversy in person or by attorney, or both, and may take testimony, orally or in writing, and regulate argument thereon, and to conduct the investigation of such complaints in such manner as to the commission may seem best adapted to arrive at the truth."

And also the following provision:

"That if any person or corporation operating a railroad or express company in this State, or any receiver, trustee or lessee of any such person or corporation as aforesaid, shall violate any of the provisions of this act, or aid or abet therein, or shall violate the tariff of charges,

as fixed by said commission, or any of the rules regarding railroads or express companies, as made by said commission, and for which there is no other penalty prescribed in this act, such person or corporation, or receiver, trustee or lessee shall be liable to a penalty not less than five hundred nor more than three thousand dollars for each violation of this act, or such tariff of charges or rules and regulations, and such penalty may be recovered by an action to be brought in the name of the State of Arkansas, in the county in which such violation may occur. The commission shall institute such action, and actions for the recovery of the penalties prescribed in this act, through the prosecuting attorney of the proper district, and no such suit shall be dismissed or compromised without the consent
16 of the court and of said commissioners; and the prosecuting attorney shall be allowed a fee by the court not to exceed twenty-five per cent. of the amount collected, and if any prosecuting attorney shall neglect for fifteen days after notice to bring suit, the commission may employ some other attorney-at-law to bring the same, who shall be allowed a fee therefor to be fixed by the court, not to exceed twenty-five per cent. of the amount collected, and in such case the prosecuting attorney shall not interfere."

And also the following provision:

"That the determination of every matter by said commission shall be in writing, and by the clerk spread upon a record kept for that purpose, which shall be a public record, and subject to inspection as such, and proof hereof shall be made by the clerk of said commission, which shall be received in evidence in the courts as certified copies of any other record. And when any matter has been determined by said commission in the course of any proceeding relating to the regulation or supervision of railroads, proof of the fact of such determination duly certified as aforesaid, shall be received in all civil actions in the courts of this State as *prima facie* evidence that such determination was right and proper."

And also the following provision:

"That if any person or corporation, operating any railroad or express company shall fail to comply with any provision of this act, such person or corporation shall be subject to a writ of mandamus, to be issued by any circuit court of this State, where such person or corporation has an office, agent or place of business, to compel a compliance with the provisions and requirements of said act, and
17 such writ shall issue in the name of the State of Arkansas at the relation of said commission appointed under the provisions of this act, and failure to comply with the requirements shall be punishable as for contempt."

And also the following provision:

"It shall be the duty of the commission herein provided for upon the complaint of any person, company or corporation in writing, charging any person or corporation, with discrimination or overcharge, to investigate the same and take such action in the premises as is provided in this act and the facts in the case justify."

And also the following provision:

"Be it further enacted, That all the provisions of this act shall

apply to and include all persons, companies or corporations carrying property on any railroad or express matter, and known as express companies, as fully as if such persons, companies or corporations were specially named and designated herein; and the words 'engaged in transporting persons or property' shall be held to include all carriers of property by railroad, whether the same are designated as freight or express."

Your orator further represents to your honors that, under and by virtue of said law, the said Felix M. Hanley, Jeremiah G. Wallace and Henry W. Wells, were, by the governor of said State of Arkansas, on the — day of ——, designated and appointed as the three persons to compose the railroad commission as created in and by said act; that said Felix M. Hanley, Jeremiah G. Wallace and Henry W. Wells accepted said appointment as such commissioners, and, as such qualified by taking the oath prescribed by said act, and ever since said date of said appointment, and at all the times herein mentioned, they were and still are the duly qualified, appointed
18 and acting commissioners of the State of Arkansas under said act, and are public officials of the State of Arkansas, and under and by virtue of such appointment, have assumed the duties imposed upon them by said act and at all the times herein mentioned have been engaged in the discharge of said duties as such public officials.

Your orator further represents that said defendants, Felix M. Hanley, Jeremiah G. Wallace and Henry W. Wells, as such public official and claiming the right so to do by reason of and under the pretended authority, or color of authority, of the said act or law of the State of Arkansas, but without any real legal authority so to do, are claiming and asserting, and have claimed and asserted, the right as against your orator to regulate, determine and prescribe the rates which your orator, The Kansas City Southern Railway Company shall and may charge for transporting freight from or to any of said places or stations in the State of Arkansas to or from any other of said places or stations in the State of Arkansas, where the course of transportation, as hereinbefore set forth, is through or over a portion of said Indian Territory, or a portion of the State of Texas, as aforesaid; and have made and prescribed rates of charges for freight so transported or to be transported from or to any of said shipping points in the State of Arkansas to or from any other of said shipping points in the State of Arkansas, and whose carriage and transportation, as hereinbefore set forth, is through and over a portion of the Indian Territory, or a portion of the State of Texas as aforesaid; and have asserted and claimed, and still assert and claim, that the Kansas City Southern Railway Company, shall not for such service and transportation, as hereinbefore set forth, from any of said shipping points in the State of Arkansas to or from any
19 other of said shipping points in the State of Arkansas, where the transportation is through a portion of the Indian Territory, or a portion of the State of Texas, as aforesaid, charge more that the rates for such service prescribed, determined and fixed or undertaken to be so determined, prescribed and fixed, by said com-

missioners acting as said public officials aforesaid; and that as such public officials, they are endeavoring and attempting and threatening to compel said Kansas City Southern Railway Company to conform to the rates so determined, prescribed and fixed by them, as such public officials as hereinbefore set forth; and are threatening in case of refusal by your orator to comply with said schedule of rates for such transportation, as hereinbefore set forth, to visit upon your orator The Kansas City Southern Railway Company, the penalties prescribed in said act or law of the State of Arkansas, for violation thereof; that in pursuance of said pretended authority claimed by defendants Felix M. Hanley, Jeremiah G. Wallace and Henry W. Wells, as such public officials, and claiming to act as such public officials, they have already cited your orator, The Kansas City Southern Railway Company to appear before them and answer the complaint of citizens of the State of Arkansas, by reason of the fact, and predicated upon the fact, that the charge made by your orator for transportation of freight from Fort Smith, in the State of Arkansas, to Grannis in the State of Arkansas, and passing in the course of transportation through said Indian Territory, as hereinbefore set forth, was in excess of the rate therefor so prescribed by said defendants, acting as such public officials; that the shipment complained of was a continuous one from Fort
20 Smith Arkansas to Grannis Arkansas and such shipment was on a through bill of lading; that said shipment so complained of as aforesaid moved in the State of Arkansas a distance of 52.155 miles and in the Indian Territory a distance of 63.841 miles; and proceeding upon such complaint, have, as such public officials, made a finding in writing that, as compared with the rate so pretended to be prescribed therefor by them as such public officials, your orator, The Kansas City Southern Railway Company has been guilty of making an overcharge in the matter of transportation of freight from Fort Smith, in the State of Arkansas, to Grannis, in the State of Arkansas, where the transportation was through the Indian Territory, as hereinbefore set forth; and have further found and stated in writing that your orator The Kansas City Southern Railway Company, is, by reason of such overcharge, liable to prosecution for the penalties provided in said act or law of the State of Arkansas; that a copy of such finding by said defendant commissioners is hereto attached and made a part hereof, and marked Exhibit "B," to which complainant prays leave to refer, and to cause the original to be produced upon the hearing of this bill; and thereupon your orator filed its petition for rehearing in said matter of complaint before said defendants herein and that said defendants herein overruled your orator's said petition for rehearing as will more fully appear by the said order entered by said defendants herein a copy of which order is hereto attached and made a part hereof and marked Exhibit "C."

Your orator further represents that the defendants Felix M. Hanley, Jeremiah G. Wallace and Henry W. Wells, commissioners and members of the railroad commission of the State of Arkansas,

pretend to have authority and right, under and pursuant
21 to said act and law of the State of Arkansas, to hear complaints filed by the citizens of that State before them, charging that the rates of freight prescribed by your orator for transportation of freight from said shipping points in the State of Arkansas to other shipping points in the State of Arkansas, where the transportation is through the Indian Territory, or the State of Texas, as hereinbefore set forth, is not in accordance with the approved schedule of rates therefor undertaken and pretended to be prescribed by said defendants herein; and pretend to have authority and power derived from said law to hear the parties to such controversies and to take testimony therein and with reference thereto, and to regulate the argument thereon, and conduct an investigation thereof in such manner as to said defendants may seem best, and to arrive at the truth and determine whether the charges complained of are in violation of the rates established or approved by said defendant commissioners; but the right and authority so to do is hereby expressly denied by your orator.

Your orator further represents that the exercise of said pretended authority and action and conduct of said defendant commissioners, in pursuance thereof, undertakes to make a failure on the part of your orator to comply with the rates established by said defendants herein for the transportation and shipment of freight of the kind herein set forth a violation of the said act and law of the State of Arkansas, and to subject this complainant to the penalties in said act and law prescribed; that, as hereinbefore shown, by the provisions of said act, every violation thereof entails a penalty of not less than five hundred dollars or more than three thousand dollars upon any person or corporation operating a railroad in the State of Arkansas guilty of such a violation, such penalty to be re-
22 covered by an action to be instituted through the prosecuting attorney of the proper district, or through some other attorney if the prosecuting attorney neglects so to do for fifteen days, at the instigation of said defendants herein, in which action so instituted fees are to be allowed against the violator in an amount not to exceed twenty-five per cent. of the penalty recovered and that, as hereinbefore shown, should any person or corporation operating a railroad fail to comply with any of the provisions of said act, it should be subject to a writ of mandamus to compel a compliance therewith, said suit to be instituted in the name of the State of Arkansas and at the relation of said defendants herein, and that the said defendants pretended that, by reason of said act and law of the State of Arkansas, they have a right to compel this complainant to charge for transportation of freight from one point in the State of Arkansas to another point in the State of Arkansas, where a portion of the transportation is through the Indian Territory, as hereinbefore set forth, a rate not in excess of that prescribed by said defendants, and in case of failure to comply with such requirements, they pretended to hold your orator, The Kansas City Southern Railway Company, as a violator of said law and act of the State of Arkansas, and subject to all the penalties thereof.

Your orator further represents that the said places or stations hereinbefore mentioned, and so located as aforesaid within the State of Arkansas, upon the line of railroad therein of your orator are the shipping points for a large and populous district, and from all of such places large and various shipments are daily being made to a large number of other places, and from and to a large number of firms and corporations, all of whom are liable to, and as your
23 orator is informed and believes, will apply for rulings of the defendants herein similar to that herein specifically stated, and will seek to compel your orator to comply with rates for such shipments and transportation of freight as may be prescribed by the said defendants herein, under the alleged or pretended authority of said defendants; that said defendants herein will do and claim the right to investigate complaints as to the rates charged by your orator between any of the said places or stations where the transportation is from one point in the State of Arkansas to another point in the State of Arkansas, through that portion of the Indian Territory or the State of Texas as hereinbefore set forth; and claim the right to regulate such charges and determine whether the rates so charged by your orator are proper; and to revise the same and compel your orator with respect thereto to conform to the rates established and fixed therefor by the said defendants herein; and that in default of which, your orator will be and is now threatened with prosecutions at the instigation of said defendants herein, to recover the penalties prescribed in said act and law of the State of Arkansas for its refusal to comply with the rates of the said defendants herein with respect to transportation between points in the State of Arkansas, where the transportation is through the Indian Territory or the State of Texas, as hereinbefore stated, and are now threatened with some suits, and, as your orator is informed and believes, are liable to be threatened with a large number of other suits by a great number of persons, firms and corporations, shipping freight from any of said places or stations in the State of Arkansas to any other of said places or stations within the State of Arkansas, and where a portion of the transportation is
24 through the Indian Territory or the State of Texas, as hereinbefore set forth; all of which will lead to a great multiplicity of suits, and your orator will be greatly harrassed and annoyed by a great multiplicity of suits; all to your orator's great and irreparable loss and damage, unless this court shall restrain and enjoin the said defendants herein from acting or assuming to act as hereinbefore set forth, and from undertaking to regulate, determine and fix the charges and rates to be made and collected by your orator in transportation of freight between any of said places hereinbefore named and situated in the State of Arkansas, on the line of railroad of your orator, where such transportation is, as hereinbefore stated, over that portion of your orator's line of railroad located within the Indian Territory, and unless this court shall enjoin and restrain the defendants herein from undertaking to exercise any authority or power under said act and law of the State of Arkansas against your orator on account of freight rates or charges made by it on account

of shipment of freight from any point in the State of Arkansas to any other point in the State of Arkansas, where a portion of the transportation is, as hereinbefore set forth, over and through a portion of the Indian Territory or the State of Texas.

Your orator further shows that the controversy in this action is between citizens of different States, and that the matter in controversy herein exceeds, exclusive of interest and costs, the sum or value of five thousand dollars.

Your orator further represents that a question is involved herein arising under the Constitution and laws of the United States as will appear by the allegations in the bill of complaint hereinbefore set forth, and the defendants herein to the great detriment and
25 irreparable injury of the property rights of your orator are undertaking to exercise a jurisdiction over the matter of regulatio*ns* commerce between the States, and to deprive your orator of its property and property rights without due process of law.

Your orator further represents that unless immediately restrained by order of this court, the penalties hereinbefore referred to will be undertaken to be enforced against your orator, on account of the particular instance in which, as hereinbefore set forth, the defendants herein, as said public officials, have already found your orator guilty of making an overcharge for a shipment of freight, and that other similar penalties are liable to be undertaken to be enforced against your orator at any time.

In consideration whereof, and forasmuch as your orator is remediless at and by the strict rules of the common law and relievable only in a court of equity, where matters of this kind are properly cognizable and relievable, your orator therefore prays that said defendant*d* Felix M. Hanley, Jeremiah G. Wallace and Henry W. Well commissioners and members of the railroad commission of Arkansas, and each of them, be enjoined and restrained from in any manner interfering with or undertaking to exercise any authority over charges or rates for freight made by your orator The Kansas City Southern Railway Company for shipment from any point in the State of Arkansas to any other point in the State of Arkansas, or to any point in any other State, where any portion of such transportation is through the Indian Territory, or any other State than the State of Arkansas, as hereinbefore set forth, and from undertaking to fix or determine any such rates, or from undertaking to compel your orator, The Kansas City Southern Railway Company,
26 to respect or comply with any rates or charges for such shipments and transportation of freight as may be made by the defendant- herein, acting in their official capacity and from entertaining or hearing or determining any controversies between citizens of the State of Arkansas and your orator, The Kansas City Southern Railway Company on account of any such charges for shipments of freight made by your orator, and from citing your orator to appear to answer to any such charges, and from instigating, directing or instituting any prosecution for penalties or otherwise against your orator, on account of any charges, and from making any orders with reference thereto or any of the fore-

going matters; and that until the hearing hereon of the application for a temporary injunction a restraining order, of like tenor and effect as the injunction above prayed, be issued against the defendants, Felix M. Hanley, Jeremiah G. Wallace and Henry W. Wells, commissioners and members of the railroad commission of Arkansas, and each of them; and that your orator may have such other and further relief in the premises as the case may require and to this court shall seem meet; and may it please your honors to grant unto your orator the subpœna of the United States of America, issueing out of and under the seal of this honorable court directed to Felix M. Hanley, Jeremiah G. Wallace and Henry W. Wells, commissioners and members of the railroad commission of Arkansas, defendants herein, therein and thereby commanding them and each of them to be and appear, at a certain day, and under a certain penalty therein to be expressed, before this honorable court, and then and there to answer, but not under oath (such answer under oath being hereby expressly waived), all and singular the premises, and to stand to and abide by and
27 perform such orders, directions and decrees as may be made against them or either of them in the premises, as shall seem meet and agreeable to equity and good con-cience.

And your orator, as in duty bound, will ever pray, etc.

(Signed) THE KANSAS CITY SOUTHERN RAILWAY COMPANY,
By LATHROP, MORROW, FOX AND MOORE,
READ AND McDONOUGH, AND
C. W. LUCUS, *Its Solicitors.*

MAX PAM, *Of Counsel.*

STATE OF ARKANSAS,)
County of Pulaski.)

C. W. Lucus being first duly sworn deposes and says that he is one of the solicitors and counsel for the complainant in the foregoing complaint. That he has read said bill of complaint and knows the contents thereof. That the allegations therein contained so far as they relate to his own acts are true, and so far as they relate to the acts of others, he believes them to be true. That the reason this verification is not made by the Kansas City Southern Railway Company is that the complainant is a corporation of the State of Missouri, having its principal office in the city of Kansas City in the State of Missouri. That no officer or director other than affiant competent to make this verification on behalf of said corporation is within this jurisdiction.

(Signed) C. W. LUCUS.

Sworn to before me and subscribed in my presence this 3rd day of October, A. D. 1900.

(Signed) W. P. FEILD, *Clerk.*

28 EXHIBIT "A."

Act LIII.

"An act to provide for the regulation of railroad freight and passenger tariffs in this State, to prevent unjust discriminations and extortion in the rates charged for the transportation of passengers and freight, and to prohibit railroad companies, corporations and lessees in this State from charging other than just and reasonable rates and to punish the same, and prescribe a mode of procedure and rules of evidence in relation thereto; and to appoint commissioners and to prescribe rules for their government and define their powers and duties in relation to the same."

29 Be it enacted by the General Assembly of the State of Arkansas:

SECTION 1. That a railroad commission is hereby created, to be composed of three persons to be appointed by the governor, until the next general election, by and with the advice and consent of the General Assembly in joint session, one to be chosen from the first and sixth, one from the second and third, and one from the fourth and fifth congressional districts, to carry out the provisions of this act, and whose successors shall be elected at each general election thereafter from the congressional districts as hereinbefore provided. After the expiration of the terms of office of the commissioners first appointed, *the terms of office of the commissioners first appointed*, the terms of office of their successors shall be two years. The salary of each commissioner shall be twenty-five hundred dollars ($2500.00) per annum to be paid from the State treasury, in the same manner that the salaries of other State officers are paid.

SEC. 2. The commissioners herein provided shall be appointed or elected as aforesaid, and shall be resident citizens of this State, and qualified voters under the constitution, and not less than twenty-five years of age. No one shall be appointed or elected as such commissioner who is directly or indirectly interested in any railroad in this State or out of it, or in any stocks, bonds, mortgages, security, or the earnings of any railroad; and if such commissioner shall become so interested he shall within a reasonable time divest himself of such interest; failing to do this, his office shall be declared by the governor to be vacant. And in case any commis-

30 sioner becomes disqualified from any cause or in any way, he shall at once remove the disqualification or resign, and on failure to do so, he must be suspended by the governor.

SEC. 3. No commissioner hereunder shall hold any other office under the Government of the United States or of this State or of any other State government; and shall not while such commissioner engage in any occupation or business inconsistent with his duties as such commissioner.

SEC. 4. The governor shall fill all vacancies in the office of commissioner by appointment, and the person so appointed shall fill out the unexpired term of his predecessor.

SEC. 5. Before entering upon the duties of his office, each of said commissioners shall take and subscribe to the oath of office prescribed in the constitution and shall, in addition thereto, swear that he is not directly or indirectly interested in any railroad, nor in any bonds, stocks, mortgages, securities, contracts or earnings of any railroad, and that he will to the best of his ability faithfully and justly execute and enforce the provisions of this act, and all laws of the State concerning railroads, which oath shall be filed with the secretary of state.

SEC. 6. The commissioners appointed shall meet at Little Rock and organize and elect one of their members chairman of said commission. A majority of said commissioners shall constitute a quorum to transact business. Said commission may appoint a secretary at a salary not to exceed fifteen hundred dollars ($1,500) per annum, and one stenographer at a salary not to exceed one thousand dollars ($1,000) per annum. The secretary shall keep
31 full and correct minutes of all transactions and proceedings of said commission, and perform such other duties as may be required by the commission. The commissioners may have power to make all needful rules for their government. They shall be known collectively as the "Railroad commission of Arkansas," and shall have a seal, the coat of arms of Arkansas with the words "Railroad commission of Arkansas," engraved thereon. They shall be furnished with an office in the capitol at Little Rock with necessary furniture, stationery, supplies and all necessary expenses not to exceed five hundred dollars ($500) per annum for subsequent years, to be paid for on the order of the governor.

SEC. 7. The commissioners, secretary and stenographer shall be entitled to receive from the State their actual necessary traveling expenses, which shall include the cost only of transportation while traveling on the business of the commission, to be paid out on the order of the governor upon an itemized statement thereof, sworn to by the party who incurred the expense and approved by the commission.

SEC. 8. Said commission may hold sessions at any place in
32 the State when deemed necessary, to facilitate the discharge of their duties, or for the convenience of the parties litigant.

SEC. 9. That every person or corporation operating any railroad or express business in this State is hereby required to furnish said commission, within fifteen days after notice to do so, with a rate sheet and tariff charges for transportation of every kind over such railroad, it shall be the duty of said commission to examine and revise said rate sheet and tariff charges for freight or express matter for each railroad in this State, and determine whether or not, and in what manner, if any, said charges and rates are more than just and reasonable compensation for the services rendered, and whether or not and in what manner, if any, said charges and rates are in violation of any of the provisions of this act; and said commission will make reasonable and just rates of freight, express and passenger tariffs to be observed by all persons and corporations operating any railroad or engaged in transporting persons or prop-

erty as express or freight in this State; shall make rules and regulations as to charges at any and all points for the necessary hauling and delivering of express and freight; regulate rates and charges for such service on all railroads as, in their judgment, justice to the public and said person or corporation may require; and so make the same conform to the requirements of this act. And said commission, in making such rules and regulations, shall first give the person or corporation to be effected thereby notice to appear and show cause, if any it can, why no change should be made in the rates then in force, and shall take into consideration the character and nature of the service to be performed, the entire earnings of any railroad or express company, the expense of operating the same,
33 the income and value thereof. And when any tariff of charges is corrected and approved, said commission shall append a certificate of its approval to said tariff of charges and give notice thereof to any officer or agent of the railroad or express company to be effected thereby, and said tariff and charges shall be kept posted up for at least five days before the same shall go into effect. And said commission shall accordingly fix rates and tariffs of charges for those express companies and railroads, the officers of which fail to furnish rate sheets or tariffs of charges as above required. Said commission shall not alter or change any tariff or charges so approved by it except upon ten days' notice in writing to the person or corporation operating the express company or railroad to be effected by such change, giving the same an opportunity to be heard; such notice to be by delivering a copy thereof to any officer or agent of such person or corporation.

SEC. 10. That all persons or corporations engaged in the transportation of passengers or property shall and are hereby required to keep posted up at every depot under the control of or in use by such person or corporation, in a conspicuous place therein, plainly and legibly printed schedules which shall state: first, the different kinds and classes of property to be carried; second, the different places between which property shall be carried; third, the rate of freight or express charges for carriage between such places, and for all services connected with the transportation of such property, from it- receipt until it is delivered or forwarded. Such schedules shall be posted for at least five days before the same shall go into effect, and the same shall remain in force until another schedule shall, as aforesaid, be posted; and every person or corporation en-
34 gaged, as aforesaid, shall receive, load, unload, transport, store and deliver to the consignee thereof any and all property offered for shipment, whether as freight or express matters at and for charges not greater than those specified in such schedule, as may at that time be in force, and shall, on demand, issue to shippers, duplicate freight or express receipts, which shall state the class of freight shipped, the weight and charges. And all the provisions of this act shall apply to all property, and all the services in and about the transportation thereof, on one actually or substantially continuous carriage, or a part thereof, and to the compensation therefor, whether the same is carried wholly on one railroad or partly on

several railroads, and whether the services are performed, or compensation paid or received by or to one person or corporation alone or in connection with another, or other persons or corporations; provided, that at such points where freight or express are subject to competition by water routes not controlled by this act nor complying with its provisions, the schedule herein provided for may be posted and go into immediate effect.

SEC. That it shall be unlawful for any person or corporation engaged alone or associated with others in the transportation of passengers, or property, by railroad in this State, as freight or express, directly or indirectly, to demand or receive from any person, firm, company or corporation, any greater or less rate or amount of compensation than is demanded or received from any other person, firm, company or corporation for substantially similar and contemporaneous services, or to allow any person, firm, company or corporation, directly or indirectly, any rebate, drawback or other advantage in any form, or to make any preference in
35 furnishing cars or motive power. And all persons or corporations engaged as aforesaid, shall furnish, without discrimination or delay, equal and sufficient facilities for the transportation of passengers, the receiving, loading and unloading, storing, carriage and delivery of all property, of a like character carried by him, them, or it; and shall perform, with equal expedition, and at uniform rates, the same kind of services connected with the contemporaneous transportation thereof as aforesaid. And it shall be unlawful for any person or corporation engaged as aforesaid to enter into any contract or agreement, by changes of schedule, use of different cars, or any other means or device, with intent to delay or prevent the shipment of such property from being continuous from the place of shipment to the place of designation, whether carried on one or more railroads.

SEC. 12. That it shall be unlawful for any person or corporation engaged in the transportation of passengers or property, as mentioned in the preceding section of this act, to make or enter into any contract, agreement or combination, directly or indirectly, for the pooling of freight, or to pool the freight of the different railroads or lines, by dividing between them the gross or net earnings of such railroads or any part thereof, or by equalizing, evening up or dividing the property or passengers carried by such railroads. But nothing in this act shall be so construed as to prevent any person or corporation operating a railroad in this State from issuing or selling at reduced rates, emigrant, excursion or commutation tickets, or from carrying free or at reduced rates any property for schools, churches, fairs, exhibitions or charitable institutions, or for the State or the United States, or any of the United States.

36 SEC. 13. That it shall be unlawful for any person or corporation engaged as aforesaid to demand or receive any greater amount of compensation for a similar amount and kind of property for receiving, storing, loading, unloading, carrying or delivering the same under similar circumstances and conditions for a shorter than for a longer distance, which includes the shorter distance; and the

road of any person or corporation shall include all the railroads in use by it, whether owned or operated by it under a contract, agreement or lease by such corporation or with which it has a traffic contract.

SEC. 14. That each and every act, matter or thing in this act declared to be unlawful is hereby prohibited; and in case any person or corporation, as defined in this act, engaged as aforesaid, shall do, or permit to be done, any act, matter or thing in this act required to be done, or shall be guilty of any of the violations of the provisions of this act, such person or corporation shall be held to pay to the person, firm or corporation injured thereby, double the amount of damages so sustained, and all costs, to be recovered
37 by the person, firm or corporation so damaged, in any court having jurisdiction of the amount, where the person or corporation causing the damage can be found, or has an agent or place of business. No action aforesaid shall be sustained unless brought within one year after the cause of action, or within one year after the party complaining shall have come to the knowledge of his or her right of action. And as many causes of action as may have accrued within the year to any one person, firm or company, may be joined in the same suit or complaint.

SEC. 15. It shall be the duty of the railroad commission to hear all complaints made by any person, firm or corporation against any such tariff of charges so approved; to hear the parties to the controversy in person or by attorney, or both, and may take testimony orally or in writing, and regulate argument thereon, and to conduct the investigation of such complaints in such manner as to the commission may seem best adapted to arrive at the truth, and when any changes are made in any tariff of charges, notice thereof shall be given to the person or corporation to be affected thereby; provided, in no instance shall any person or corporation operating a railroad or express company, the schedule of charges which have been submitted to, revised and approved by the commission, be civilly or criminally liable for the making of any charge which has been authorized by the tariff of charges so approved, or the rules and regulations prescribed by the commission.

SEC. 16. That every person or corporation operating a railroad or express company having an agent or office in the State shall, upon notice to do so, furnish said commission with all the informa-
38 tion required to enable said commission to perform its duties relative to the management of their respective lines, and connecting lines, and particularly with copies of all leases, contracts and agreements with other lines, express companies or sleeping car companies, and shall furnish all such information as to the number of persons employed in the different departments of their service and the wages paid the same, as said commission may require.

SEC. 17. That it shall be the duty of every person or corporation operating any railroad or express company in this State to make annual returns of the business of said railroad or express company to the railroad commission of Arkansas, which returns shall embrace all receipts and expenditures of said railroad or express com-

panies in this State, and to make according to forms furnished by the commission for that purpose; said returns shall be made within thirty (30) days after the end of each year to which they relate; and the first return shall be furnished within thirty (30) days after the passage of this act, unless further time is granted by the commission; said returns shall be sworn to by some officer of said railroad or express company having knowledge of the matters therein stated. And any such person or corporation who shall fail or refuse to make such returns shall be liable to a penalty of fifty dollars ($50) for each day of such failure or refusal, such penalty to be recovered by action commenced in the name of the State of Arkansas in any court having jurisdiction of the amount, such action to be prosecuted as hereinafter provided.

SEC. 18. That if any person or corporation operating a railroad or express company in this State, or any receiver, trustee, or
39 lessee of any such person or corporation as aforesaid, shall violate any of the provisions of this act, or aid or abet therein, or shall violate the tariff of charges, as fixed by said commission, or any of the rules regarding railroads or express companies, as made by said commission, and for which there is no other penalty prescribed in this act, such person, or corporation, or receiver, trustee or lessee shall be liable to a penalty of not less than five hundred ($500) nor more than three thousand dollars ($3000) for each violation of this act, or such tariff of charges or rules and regulations, and such penalty may be recovered by an action to be brought in the name of the State of Arkansas, in the county in which such violation may occur. The commission shall institute such action, and actions for the recovery of the penalties prescribed in this act, through the prosecuting attorney of the proper district, and no such suit shall be dismissed or compromised without the consent of the court and of said commissioners; and the prosecuting attorney shall be allowed a fee by the court not to exceed twenty-five per cent. of the amount collected, and if any prosecuting attorney shall neglect for fifteen days after notice to bring suit, the commission may employ some other attorney-at-law to bring the same, who shall be allowed a fee therefor to be fixed by the court, not to exceed twenty-five per cent. of the amount collected, and in such case the prosecuting attorney shall not interfere; provided, that in all trials of cases brought for a violation of any tariff charges by said commission, it may be shown in defense that such tariff so fixed was unjust. Nothing in this section shall be so construed as to in any manner interfere with the action for damages as provided in section fourteen (14) of this act.

SEC. 19. That the determination of every matter by said
40 commission shall be in writing, and by the clerk spread upon a record kept for that purpose, which shall be a public record, and subject to inspection as such, and proof hereof shall be made by the clerk of said commission, which shall be received in evidence in the courts as certified copies of any other record. And when any matter has been determined by said commission in the course of any proceeding relating to the regulation or supervision of railroads,

proof of the fact of such determination, duly certified as aforesaid, shall be received in all civil actions in the courts of this State as *prima facie* evidence that such determination was right and proper.

SEC. 20. That the provisions of this act shall not be construed as to require said commission to investigate or call upon any railroad or express company for its schedule or tariff of charges in the transportation of passengers or property from any point wholly outside of this State, or in any way interfere with such rates or charges.

SEC. 21. That the expenses of the commission shall be paid from the State treasury on the warrant of the auditor of State, the same to be paid quarterly and the clerk of said commission shall, at the end of each quarter, make out an itemized account of all the expenses incurred by said commission, fees paid to officials for issuing and serving notices, processes, witness fees, and any other expenses actually paid and which are authorized by this act; and said account shall be examined by said commission and approved by them if correct, and said account so approved shall be filed with the auditor of State, and he shall issue his warrant on the State treasurer for the amount of said account, and deliver the same to the clerk of said commission, and the State treasurer is hereby author-
41 ized to pay the same, and all fines and penalties recovered by the provisions of this act shall be paid into the State treasury, to the credit of the general fund.

SEC. 22. That if any person or corporation, operating any railroad or express company shall fail, refuse or neglect, after notice by said commission, to put up its rate sheet, giving its tariff of charges in the manner, place and time, as provided in this act, or to furnish said commission with the rate sheet and tariff of charges as provided for in this act, or to furnish cars and motive power for the prompt transportation of freight as provided in this act, or to comply with any provision of this act, or to make returns as required by this act, such person or corporation shall be subject to a writ of mandamus, to be issued by any circuit court of this State, where such person or corporation has an office, agent or place of business, to compel a compliance with the provisions and requirements of said act, and such writ shall issue in the name of the State of Arkansas at the relation of said commission appointed under the provisions of this act, and failure to comply with the requirements shall be punishable as and for a contempt.

SEC. 23. It shall be the duty of the commission herein provided for, upon the complaint of any person, company or corpora-
42 tion, in writing, charging any person or corporation with discrimination or overcharge, to investigate the same and take such action in the premises as is provided in this act and the facts in the case justify.

SEC. 24. Be it further enacted, That all the provisions of this act shall apply to and include all persons, companies or corporations carrying property on any railroad as express matter, and known as express companies, as fully as if such persons, companies, or corporations were specially named and designated herein; and the words "engaged in transporting persons or property" shall be held to in-

clude all carriers of property by railroad, whether the same are designated as freight or express.

SEC. 25. The commissioners, or either of them, shall have the right, at such times as they may deem necessary, to inspect the books and papers of any railroad company, and to examine under oath any officer, agent or employee of such railroad in relation to the business and affairs of the same. If any railroad shall refuse to permit the commissioners, or either of them, to examine its books and papers, said railroad company shall, for each offense, pay to the State of Arkansas not less than one hundred dollars ($100) nor more than five hundred dollars ($500) for each day it shall so fail and refuse.

SEC. 26. Any officer, agent or employee of any railroad company who shall, upon proper demand, fail or refuse to exhibit to the commissioners, or either of them, any book or paper of such railroad company which is in the possession or under the control of such officer, agent or employee, shall be deemed guilty of a misdemeanor, and upon conviction in any court having jurisdiction thereof
43 shall be fined for each offense a sum not less than one hundred dollars ($100) nor more than five hundred dollars ($500).

SEC. 27. The commission shall ascertain as early as practicable the amount of money expended in the construction and equipment per mile of every railroad in Arkansas, the amount of money expended to procure the right of way, and the amount of money it would require to reconstruct the road-bed, track, depots and to replace all the physical properties belonging to the railroad. It shall also ascertain the amounts paid for salaries to the officers of the railroad, the wages paid to employés and the operating expenses of each and every railroad in the State, including repairs and interest in indebtedness. When the information required by this section is obtained it shall be communicated to the attorney general by report, and a duplicate of same filed with the auditor for public use, and said information shall be printed from time to time in the annual report of the commission.

SEC. 28. The commission shall make and submit to the governor annual reports, containing a full and complete account of the transactions of their office, together with the information gathered by such commission as herein required, and such other facts, suggestions and recommendations as may be by them deemed necessary, which report shall be published as the reports of the heads of departments.

SEC. 29. The said commission, in making any examination or investigation provided for in this act, shall have power to issue subpœnas for the attendance of witnesses, and every witness who shall appear by order of the commission at a place outside of the county of his residence shall receive for his attendance one dollar and fifty cents ($1.50) per day, and five cents per mile,
44 traveled by the nearest practicable route, in going to and returning from the place of meeting of said commission, but witnesses who reside within the county in which the commission meets shall receive one dollar and fifty cents ($1.50) per day for

each day's attendance, but no mileage, which shall be paid upon the warrant of the auditor, upon the presentation of the proper vouchers, sworn to by such witness approved by the chairman of the commission; provided, that no witness shall be entitled to any witness fees or mileage who is directly or indirectly interested in any railroad in this State, or out of it, or who is in anywise interested in any stock, bond, mortgage, security or earnings of any such road, or who shall be the agent or employee of such road. or any officer thereof, when summoned at the instance of such railroad, and no witness furnished with free transportation shall receive pay for the distance he may have traveled on such free transportation. In case any witness shall fail or refuse to obey such subpœna said commission may issue an attachment for said witness, directed to any sheriff or any constable in the State of Arkansas, and compel him to attend before the commission and give his testimony upon such matters as shall be lawfully required of them. If a witness, after being duly summoned, shall fail or refuse to attend or to answer any question propounded to him and which he would be required to answer if in court, the commission shall have the power to fine and imprison such witness for contempt, in the same manner that a judge of the circuit court might do under similar circumstances. The claim that any such testimony may tend
45 to criminate the person giving it shall not excuse such witness from testfying; but the person so testifying shall not be prosecuted or subject to any penalty or forfeiture, for or account of any transaction, matter or thing concerning in any way such case or proceeding; provided, that no person shall be exempt from perjury in so testifying; provided further, the commission shall in all cases have the right to issue proper process and take depositions instead of compelling personal attendance of witnesses. The sheriff or constable executing any process under the provisions of this bill shall receive such compensation as may be allowed by the commission, not to exceed fees as now prescribed by law.

SEC. 30. That the remedies hereby given shall be regarded as cumulative, and this act shall not be construed as repealing any statute giving such remedies.

SECTION 31. All acts and parts of acts inconsistent with this act are hereby repealed, and this acts shall take effect and be in force from and after its passage.

Approved March, 11th, 1899.

46 EXHIBIT "B."

FORT SMITH CHAIR COMPANY
vs.
KANSAS CITY SOUTHERN RAILWAY COMPANY.

Opinion of Felix M. Hanley, Commissioner.

The state of facts upon which this case is submitted is as follows: The plaintiff The Fort Smith Chair Company shipped over the road

of the defendant a lot of chairs from its factory at Fort Smith, Arkansas to Grannis, a station also in the same State. The transportation was continuous and over the same line of road. The freight in transit passed out of the State of Arkansas into the Indian Territory and back again into the State. The defendant demanded and received for the transportation an amount which exceeds the maximum rate as fixed by the railroad commission of Arkansas for the distance from Fort Smith to Grannis in the sum of $1.81.

The defendant claims that the transportation was interstate commerce and not subject to control by the State.

The question presented is one purely of law and involves the determination of whether the transaction constitutes domestic or interstate commerce upon which depends the jurisdiction of the State to control the same.

We are aware that the Interstate Commerce Commission has held a similar transaction to be interstate commerce, which holding seems to have been acquiesced in by the Texas railroad commission. While it would be pleasant to be in harmony with these two great bodies we deem it safe to follow the courts *can* we ascertain in what direction lies the weight of judicial opinion.

In the earlier discussion of the provisions of the Constitution of the United States under which Congress derives its powers
47 to regulate commerce with foreign nations and among the States and the Indian tribes, the question arose whether transportation and navigation were embraced in the term commerce. All doubt as to this was set at rest by the decision in Gibbon *vs.* Ogden 9 Wheaton 1, where it was held that the term commerce includes navigation as clearly as if it had been specially mentioned in the grant. In the case last above cited, the Supreme Court of the United States also defines the phrase "among the States" as used "in the constitutional provision above mentioned to mean 'intermingled with.'" The court further says, "It is not intended to say that these words comprehend that commerce which is completely internal, which is carried on between man and man in a State, or between different parts of the same State, and which does not extend to or effect other States. Such a power would be inconvenient and is certainly unnecessary," Gibbon *vs.* Ogden, *supra.* In another case it was held by the Supreme Court of the United States that Congress had the right to regulate the liability of owners of vessels navigating the high seas, but engaged, only, in the transportation of goods and passengers between ports and places in the same State. The reason for this holding is given in the following language: "The Pacific ocean belongs to no one nation, but is the common property of all mankind. When therefore the Ventura went out from San Diego or San Francisco on her several voyages she entered on a navigation which was necessarily connected with *either* nations. While on the ocean her national character only was recognized and she was subject to such laws as the commercial nations of the world had by usage or otherwise agreed on for the government of vehicles of commerce occupying this common prop-

erty of mankind. She was navigating among the vessels
48 of other nations, and was treated by them as belonging to the country whose flag she carried. True she was not trading with them, but *but* she was navigating with them and consequently was engaged with them in commerce. If in her navigation she inflicted wrong on another country the United States, and not the State of California, must answer for what was done. In every just sense, therefore she was, while on the ocean, engaged in commerce with foreign nations, and as such she and the business in which she was engaged were subject to the regulating power of Congress.

Navigation on the high seas is necessarily national in its character. Such navigation is clearly a matter of 'external concern,' affecting the nation as a nation in its external affairs. It must therefore be subject to the National Government." Lord *vs.* Steamship Company 102 U. S. 541.

The question presented here, in a somewhat different form, was passed upon by the Supreme Court of the United States in Lehigh Valley Railroad Company *vs.* Pennsylvania. Under the statutes of Pennsylvania a tax is levied upon the receipts of railroads derived from domestic freight and passenger traffic. The Lehigh Valley road refused to pay such taxes on its receipts from freight transported between Mauch Chunk and Philadelphia, alleging that such traffic was interstate commerce, because in its passage it was carried for some distance over territory of the State of New Jersey. The commerce however was held to be domestic and the validity of the tax upheld.

Chief Justice Fuller in delivering the opinion of the court says: "If it happened through engineering difficulties, as the interposition of a mountain or river, the line was deflected so as to
49 cross the boundary, and to run for the time being in another State than that of its principal location does such detour impress an external character or internal intercourse. For example, the Nashville Chattanooga and St. Louis Railroad Company is a corporation created under the laws of the State of Tennessee, and through freight and passengers transported from Nashville to Chattanooga pass over a few miles in Alabama and perhaps two miles in Georgia, but we had not supposed that the circumstances would render the taxation of that company in respect of such business by the State of Tennessee invalid." In the same decision occurs this language. "It should be remembered that the question does not arise as to the power of *a* any other State than the State of the terminal, nor as to taxation upon the property of the company situated elsewhere than in Pennsylvania nor as to the regulation by Pennsylvania of the operation of this or any other company elsewhere, but it is simply whether the carriage of freight and passengers between two points in one State, the more passagee over the soil of another State rendered that business foreign which was domestic. We do not think such a view can be reasonably entertained." Lehigh Valley Railway Company *vs.* Pennsylvania 145 U. S. 192.

The supreme court of Iowa had the question involved directly be-

fore it and following the decision of the Lehigh Valley case held that "shipments between points in the same State do not constitute interstate commerce because made on a railroad which runs for part of the trip in another State, and the rate fixed by the railroad commission governs." Cambell *vs.* Chicago, Milwaukee & St. Paul R. R. Co. — Iowa 587.

The same doctrine has been announciated by the supreme
50 courts of both Missouri and North Carolina. See

Seawell *vs.* Kansas City, Fort Scott & Memphis R. R. 119 *No.* 222

State *vs.* Western Union Telegraph Co. 113 N. C. 213

Leavell *vs.* Western Union Telegraph Co. 116 N. C. 211.

Upon examination of the subject presented we conclude that the weight of authority justifies the statement of the law as made by a late text-writer in the following language.

"The power to regulate domestic and interstate commerce resides in the States; the States may make such regulations as they deem expedient or politic for the government of commerce within their borders; provided that the regulations do not violate some consitutional provision. If the place from which the passengers or property are transported and place to which they are carried are both within the territorial limit of the same State and the carriage is continuous, then the transportation is interstate commerce although in course of carriage the passengers or property — may be on line of transportation pass beyound the borders of the State. To the rule that where both the place where the passengers or property are received and the place of destination are within the territorial limits of the same State is interstate commerce and subject to State regulations, there is an exception and that exception is this If the carriage is over the high seas, although from place to place in the same State, it is interstate commerce and *and* cannot be regulated by the State." Elliott on Railroads sec. 690. We are therefor- constrained to hold that the transportation of the goods from Fort Smith Arkansas to Grannis, Arkansas though passing through the Indian Territory en route, constitutes domestic commerce and as such is subject to regu-
51 lation of this commission. That the amount demanded by defendant and paid by the plaintiff constitutes an overcharge in the sum of one and $\frac{81}{100}$ dollars and the defendant is liable to prosecution for a penalty for such overcharge.

In re FORT SMITH CHAIR COMPANY
vs.
THE KANSAS CITY SOUTHERN RAILWAY COMPANY.

Now on this day come the defendants, The Kansas City Southern Railway Company by C. W. Lucus and James F. Read, its attorneys, and the petition for rehearing, heretofore filed, coming on to be heard, was presented to the commission. And the commission, being well and truly advised in the premises, doth overrule the said petition for rehearing, and hereby orderes and directs that the

said Kansas City Southern Railway Company comply with and maintain the rates heretofore established by the commission from points in Arkansas to other points in Arkansas where such shipment passes through a portion of the Indian Territory, or any other State *other* than the State of Arkansas.

To which action and ruling of the commission the said Kansas City Southern Railway Company, by its counsel, hereby excepts.

I hereby certify that the above and foregoing is a true copy of the order this day entered overruling the petition for rehearing heretofore filed in this cause by said defendant The Kansas City Southern Railway Company.

Witness my hand this 3rd day of October, 1900.

H. W. WELLS, *Chairmen.*

52 UNITED STATES OF AMERICA,
Western Division of the Eastern District of Arkansas.

Be it remembered, that at a circuit court of the United States of America, in and for the western division of the eastern district of Arkansas, begun and holden on Monday, the 9th day of April anno Domini, one thousand nine hundred, at the United States court-room, in the city of Little Rock, Arkansas, the Honorable Jacob Trieber district judge presiding and holding said —, the following proceedings were had, to wit: On October 5th, 1900.

THE KANSAS CITY SOUTHERN RAILWAY COMPANY
vs.
FELIX M. HANLEY, JEREMIAH G. WALLACE, and HENRY W. WELLS, Commissioners and Members of the Railroad Commission of Arkansas. } 1336.

This cause having come on to be heard this day upon the application of the complainant herein The Kansas City Southern Railway Company, for an injunction against the defendants herein, Felix M. Hanley, Jeremiah G. Wallace and Henry W. Wells, commissioners and members of the railroad commission of Arkansas, as prayed for in the bill of complaint herein, and it appearing to the court that due and sufficient notice of such application has been given to said defendants and each of them, and service thereof accepted by them, and the said complainant being present in open court but the defendants failing to appear, and the court having read and examined the bill of complaint herein and having heard the arguments and statements of counsel and being fully advised in the premises;

It is therefore hereby ordered, adjudged and decreed that said defendants Felix M. Hanley, Jeremiah G. Wallace and Henry W. Wells, commissioners and members of the railroad commission of Arkansas, and each of them, be and are hereby enjoined and
53 restrained from in any way or manner interfering or undertaking to exercise any authority over, or to fix or determine any charges or rate of freights, made by the complainant, The Kansas City Southern Railway Company, for transportation or shipment

of freight from any point in the State of Arkansas, to any other point within the State of Arkansas, where any portion of such shipment of freight is through, over or along the Indian Territory, or any part thereof, or any other State of Territory than the State of Arkansas, or any part thereof.

It is hereby further ordered, adjudged and decreed that said defendants, Felix M. Hanley, Jeremiah G. Wallace and Henry W. Wells, commissioners and members of the railroad commission of Arkansas, and each of them be, and they are hereby enjoined and restrained from instituting any proceedings, and from taking any other steps or action whatsoever to compel the complainant herein, The Kansas City Southern Railway Company, to respect or comply with or enforce any charges or rate of transportation or shipment of freight from any point in the State of Arkansas to any other point within the State of Arkansas, when any portion of such transportation or shipment of freight is through, over or along the Indian Territory, or any part thereof, or any other State or Territory than the State of Arkansas, or any part thereof.

It is hereby further adjudged and decreed that the said defendants Felix M. Hanley, Jeremiah G. Wallace and Henry W. Wells, commissioners and members of the railroad commission of Arkansas, and each of them be, and they are hereby enjoined and restrained fr-m entering or hearing or determining any complaint against the complainant herein, The Kansas City Southern Railway Company, or any controversy between the said complainant and any citizen of the State of Arkansas in reference to any, or on account of any charges or rates of transportation or shipment of freight from any point in the State of Arkansas to any other point in the State of Arkansas, where any portion of such transportation or shipment of freight is through, over or along the Indian Territory, or any part thereof, or any other State or Territory than the State of Arkansas, or any part thereof.

It is hereby further ordered, adjudged and decreed that said defendants, Felix M. Hanley, Jeremiah G. Wallace and Henry W. Wells, commissioners and members of the railroad commission of Arkansas, and each of them, be, and they are hereby enjoined and restrained from instituting, instigating or directing any proceedings or prosecuting for penalties against the complainant The Kansas City Southern Railway Company, on account of, or with reference to, the charges or rates of transportation or shipment of freight from any point in the State of Arkansas to any other point within the State of Arkansas, where any portion of such transportation or shipment is through, over or along the Indian Territory, or any part thereof, or any other State or Territory than the State of Arkansas, or any part thereof, or for undertaking, directly or indirectly, to hold said complainant, The Kansas City Southern Railway Company, accountable to these defendants, Felix M. Hanley, Jeremiah G. Wallace and Henry W. Wells, commissioners and members of the railroad commission of Arkansas, or any of them, on account of or with reference to any charges or rates which said complainant, The Kansas City Southern Railway Company has or

may charge for the shipment or transportation of freight as aforesaid. This order enjoining and restraining the said defendants Felix M. Hanley, Jeremiah G. Wallace and Henry W. Wells, commissioners and members of the railroad commission of Arkansas, shall be and remain in full force and effect until the further order of this court after the execution by said complainant of a bond with good and sufficient securities in the sum of ten thousand dollars conditioned to pay to the defendants or their successors in office all costs and damages which may result from the issue of this order, if it shall be finally determined that the same was improperly issued, or that may be awarded to them by reason of the granting of this order.

(Signed) JACOB TRIEBER, *Judge.*

54 And on the same day the following proceedings were had to wit:

THE KANSAS CITY SOUTHERN RAILWAY COMPANY
vs.
F. M. HANLEY, &C., ET AL. } 1336.

Comes the complainant by C. W. Lucus, Esq., its solicitor, and files herein its injunction bond in the sum of ten thousand dollars ($10,000.00) with the Fidelity and Deposit Company of Maryland as surety, which is approved in open court by the judge.

Which bond is as follows:

In the Circuit Court of the United States for the Western Division of the Eastern District of Arkansas.

THE KANSAS CITY SOUTHERN RAILWAY COMPANY
vs.
FELIX M. HANLEY, JEREMIAH G. WALLACE, and HENRY W. Wells, Commissioners and Members of the Railroad Commission of the State of Arkansas. } 1336.

Know all men by these presents that we the Kansas City Southern Railway Company, as principal, and the Fidelity and Deposit Company of Maryland as surety, are held and firmly bound unto Felix M. Hanley, Jeremiah G. Wallace and Henry W. Wells, commissioners and members of the railroad commission of the State of Arkansas, and their successors in office, in the just and full sum of ten thousand dollars ($10,000.00), for the payment of which, well and truly to be made, we do hereby jointly and severally
55 bind ourselves, and each of our successors, heirs, executors and administrators firmly by these presents.

Sealed with our seals and dated this 5th day of October A. D. 1900, upon conditions as follows:

Whereas the Honorable Jacob Trieber, district judge of the United States for the eastern district of Arkansas, has granted a restraining order in this cause, upon condition that the said com-

plainant shall cause to be executed a good and sufficient bond to the defendants for the sum of ten thousand dollars ($10,000.00), to secure them against all costs and damages, which may be awarded to them in case said order shall be finally determined to have been improperly granted:

Now, therefore, if the said Kansas City Southern Railway Company shall well and truly pay the said defendants all costs and damages which may be awarded to them, in case said court shall finally determine that said order was improperly granted not exceeding the sum of ten thousand dollars ($10,000.00), then this obligation to be null and void; otherwise to remain in full force and effect.

Witness our hands and seals this 5th day of October, A. D. 1900.

(Signed) THE KANSAS CITY SOUTHERN RAILWAY COMPANY,
By C. W. LUCUS, *Its Assistant Gen. Att'y.*
FIDELITY AND DEPOSIT COMPANY OF MD.,
By S. R. COCKRILL, *Att'y-in-fact.*
[SEAL.] J. E. COATES, *Gen'l Agent.*
Attest:

(Five five-cent revenue stamps.)

Approved:
JACOB TRIEBER, *Judge.*

Filed October 5th, 1900.

W. P. FEILD, *Clerk.*

56 UNITED STATES OF AMERICA,
Western Division of the Eastern District of Arkansas.

Be it remembered, that at a circuit court of the United States of America, in and for the western division of the eastern district of Arkansas, begun and holden on Monday, the 22nd day of October, anno Domini, one thousand nine hundred, at the United States court-room, in the city of Little Rock, Arkansas, the Honorable Jacob Trieber, U. S. district judge, presiding and holding said court, the following proceedings were had, to wit: November 5th, 1900.

KANSAS CITY SOUTHERN RAILWAY COMPANY
vs. } 1336.
FELIX M. HANLEY, &C., ET AL.

Come the defendants by Felix M. Hanley, Esq., their solicitor, and file herein their joint and several demurrer to the bill of complaint. Which demurrer is as follows:

In the Circuit Court of the United States for the Western Division of the Eastern District of Arkansas.

THE KANSAS CITY SOUTHERN RAILWAY COMPANY
vs.
FELIX M. HANLEY, JEREMIAH G. WALLACE, and HENRY W. Wells, as Commissioners and Members of the Railroad Commission of Arkansas. } 1336.

The defendants by protestation, not confessing any or all of the matters and things in the plaintiff's bill of complaint contained to be true, in such manner and form as the same is therein set
57 forth and alleged, doth demur to said bill, and for cause of demurrer sheweth:

That the plaintiff hath not in his said bill made or stated such a cause as entitles him, in a court of equity, to an injunction against these defendants, or either of them, or to any relief against these defendants or either of them.

Wherefore and for divers other good causes of demurrer appearing in said bill, the defendants doth demur thereto, and humbly demand the judgment of this court whether they shall be compelled to make any forther answer to the said bill, and prays to be hence dismissed with their costs and charges in this behalf most wrongfully sustained.

(Signed) HENRY W. WELLS.
FELIX M. HANLEY, *Defd.*

I hereby certify that the demurrer in this cause is in my opinion well founded and not interposed for delay

(Signed) FELIX M. HANLEY, *Attorney.*

Filed November 5th, 1900.

W. P. FEILD, *Clerk.*

And on December 15th, 1900, the following proceedings were had to wit

THE KANSAS CITY SOUTHERN RAILWAY COMPANY
vs.
FELIX M. HANLEY, JEREMIAH G. WALLACE, and HENRY W. Wells, Commissioners and Members of the Railroad Commission of the State of Arkansas. } 1336.

Comes the complainant by Lathrop, Morrow, Fox and Moore, Read and McDonough and C. W. Lucus Esqs., its solicitors and comes the defendant by Winchester and Martin Esqs., its
58 solicitors, and the demurrer of the defendant to the bill heretofore filed herein now coming on for hearing and the court having heard argument of counsel thereon and not now being well and sufficiently advised in the premises takes time to consider of its judgment herein.

And on February 5th, 1900, the following proceedings were had to wit:

Opinion of the Court.

In the Circuit Court of the United States for the Western Division of the Eastern District of Arkansas.

KANSAS CITY SOUTHERN RAILWAY COMPANY
vs.
THE BOARD OF RAILROAD COMMISSIONERS OF THE STATE of Arkansas. } 1336.

On demurrer to the bill.

The allegations in the bill are, that the complainant is a railroad corporation existing under the laws of the State of Missouri, owning a line of railroad and operating it as a common carrier of passengers and freight from Kansas City, in the State of Missouri to Ogden on the line dividing the States of Arkansas and Texas that said railroad traverses parts of the following States and Territories to wit: Missouri, Arkansas Kansas and Indian Territory; that after leaving the State of Missouri it runs through the State of Arkansas for 28.649 miles; thence through the Indian Territory for a distance of 127.781 miles, then again into the State of Arkansas, which it traverses for a distance of 117.618 miles; that it also
59 has a branch line from Spiro, in the Indian Territory, to Fort Smith, in the State of Arkansas, fifteen miles of which is in the Indian Territory and one mile in the State of Arkansas; that it also owns other branches running from points in the State of Texas and the Indian Territory for short distances to points in the State of Arkansas, and along which lines there are numerous stations to and from which freight is shipped; that whenever any freight is shipped from these stations to Fort Smith or from Fort Smith to them, such shipments must of necessity pass over complainant's line of railroad extending through the Indian Territory, and to points in Miller county, Arkansas, also through the State of Texas; that the defendants, who compose the railroad commission of the State of Arkansas claim and assert, under the authority of that State, the right to regulate the charges for carrying freight by complainant from and to places in the State of Arkansas, where the course of transportation is mostly through and over the Indian Territory or in the State of Texas, and have prescribed rates of charges for freight thus transported for the largest portion through the Indian Territory or State of Texas, and threaten, upon the refusal of complainant to comply with their schedules and charges, to visit it with the penalties prescribed by the laws of the State of Arkansas for violations of the orders of the railroad commission; that, in pursuance to their alleged authority, they have cited complainant to appear before them and answer the complaint of citizens of the State of Arkansas, by reason of the fact that complainant charges for the transportation of freight from Fort Smith Arkansas, to Gran-

nis, in the same State, passing in the course of transportation through the Indian Territory for the largest portion of the trip, a rate
60 in excess of that prescribed by the commission, although the shipment complained of was a continuous one from Fort Smith to Grannis, on a through bill of lading, and moved in the State of Arkansas only 52.155 miles, and in the Indian Territory a distance of 63.841 miles that upon the hearing of said complaint, the commissioners made a finding that complainant had been guilty of an overcharge and by reason thereof is liable to prosecution for the penalties prescribed by the laws of the State of Arkansas; that the complainant's plea to the jurisdiction of the commission was by it overruled, it claiming to have the power to regulate charges for shipments between points in the State of Arkansas, although the largest portion of the haul was through and over the Indian Territory; that the penalty prescribed by the laws of the State of Arkansas for each violation of the order of the commission is a fine of not less than five hundred dollars nor more than three thousand dollars, to be recovered by an action instituted by the State's attorneys, or if not instituted by them within fifteen days, such action may be instituted by an attorney, who is to receive for his services twenty-five per cent. of the penalty imposed and recovered.

The bill further charges that complainant does a large carrying business between stations in the State of Arkansas, but which it must carry principally on the line of road in the State of Texas and the Indian Territory and, if the defendants are not restrained by injunction, a large number of suits will be instituted by parties against complainant for the penalties prescribed by the laws of the State, to the great detriment and irreparable injury of complainant.

A temporary injunction having been granted, after due notice
61 thereof to the defendants, the defendants have filed a demurrer to the bill upon the ground that, upon the allegations made, complainants are not entitled to any relief.

Lathrop, Morrow, Fox & Moore; C. W. Lucus; Read and McDonnough, for complainants.

Felix M. Hanley and Winchester & Martin for the defendants.

TRIEBER, *District Judge:*

The only question involved and argued by counsel is whether, upon the facts set out in the bill, the carriage of freight by a railroad operating a continuous line of road in several States and Territories from one point in a State to another point in the same State, when the course of transportation must be for a considerable distance in another State or Territory, is subject to regulations made by the board of railroad commissioners of that State, or whether such traffic is interstate or intrastate. If the former, it is conceded by counsel for the defendants that the railroad commission of the State of Arkansas has no power to regulate the charges for carrying freight, and the demurrer to the bill should be overruled.

The language of section 8, article 1 of the Constitution of the United States is, that Congress shall have power to "Regulate commerce with foreign nations, and among the several States, and with

the Indian tribes." But for this provision in the Constitution, each sovereign State would have the right to regulate and tax all commerce coming from the other States, or passing through it. Shipments from one point in a State to another in the same State would, the moment they entered the other State, although intended
62 only for passage through that State, be subject to the control of the authorities of that State. Under the Articles of Confederation, in force prior to the adoption of the Constitution each of the State- claimed and was conceded that privilege. No doubt to avoid this interference with the foreign commerce, as well as that among the States, was one of the great objects of the framers of the Constitution and one of the important causes giving rise to the calling of the convention which framed the Constitution. Mr. Madison in paper No. 42 of the Federalist, speaking of this subject said:

"The defect of power in the existing confederacy, to regulate the commerce between its several members, is in the number of those which have been clearly pointed out by experience. To the proof and remarks which former papers have brought into view on this subject it may be added, that without this supplemental provision, the great and essential power of regulating foreign commerce, would have been incomplete and ineffectual. A very material object of this power was the relief of the States which export and import through other States, from the improper contributions levied on them by the lat-er. Were these at liberty to regulate the trade between State and State it must be foreseen, that ways would be found out, to load the articles of import and export, during the passage through their jurisdiction, with duties which would fall on the makers of the lat-er, and the consumers of the former. We may be assured, by past experience, that such a practice would be introduced by future contrivances; and both by that and a common knowledge of human affairs, that it would nourish unceasing animosities, and not improbably terminate in serious interruptions of the public tranquil-ity. To those who do not view the question through the medium of passion or of interest, the desire of the commercial States to collect, in any form an indirect revenue from their uncommercial neighbors, must appear not less impolitic than it is unfair; since it would stimulate the injured party, by resentment as well as interest, to resort to less convenient channels for their foreign trade. But the mild voice of reason, pleading the cause of an enlarged and permanent interest, is but too often drowned before public bodies as well as individuals, by the clamors of an impatient avidity for immediate and immoderate gain."

In his Journal of the Constitutional Convention, vol. 1, page
63 46, Mr. Madison, in speaking of the defects in the Articles of Confederation says:

"The same want of a general power over commerce led to an exercise of the power, seperately, by the States which not only proved abortive, but engendered rival, conflicting and angry relations."

And further on he says, on page 48:

"Such were the defects, the deformities, the deseases and the

omaious prospects, for which the convention were to provide a remedy and which ought never to be overlooked in expounding and appreciating the constitutional charter, the remedy that was provided."

On page 60, Mr. Madison in enumerating the deficiencies of power under the concederacy, said, among other things that:

"The Federal Government could not defend itself against encroachment from the States."

It is now well settled that this grant to Congress gives it exclusive control of commerce among the States and absolutely deprives the States of any and all power to legislate in any manner interfereing with or impeding interstate commerce. Gibbons *vs.* Ogden, 9 Wheat. 1, 186; Passenger cases, 7 How. 395, 400 Cooley *vs.* Port Wardens 13. How. 310. Robins *vs.* Shelby District, 120 U. S. 492; Wabash, etc. Railway Co. *vs.* Illinois, 118 U. S. 573; Leisy *vs.* Hardin, 135 U. S. 108; Bridge Company *vs.* Kentucky, 154 U. S. 218; Smyth *vs.* Ames, 169 U. S. 466; and it is equally well settled that the power granted to Congress by the Constitution does not extend to commerce wholly within a State. Gibbons *vs.* Ogden, *supra;* Greer *vs.* Connecticut, 161 U. S. 513.

While in the case at bar the railroad does not traverse a State other than the State of Arkansas, but a Territory with no legislative powers, these powers have been reserved by Congress to itself, this cannot in any way effect the determination of the issues involved,

as it is a jurisdiction seperate and distince from the State of
64 Arkansas and it can no more be invaded by that State than if it were a sovereign State. Congress alone has the power to regulate the internal affairs of the Indian Territory, prescribe regulations for railroads therein, limit their charges for the transportation of freight and passengers and exercise the power which in a State belongs to the people of that State. American Insurance Company *vs.* 356 Bales of Cotton, 1 Pet. 541; United States *vs.* Gratiot, 14 Pet. 534; National Bank *vs.* Yankton, 101 U. S. 133; Corporation, etc. *vs.* United States 136 U. S. 1.

The right of way through the Indian Territory now enjoyed by complainant was derived from Congress, which granted it to complainant's predecessor. In the act of granting the right of way, Congress exercised the power to regulate and limit the rates of transportation over the soil of the Territory: The language used is:

The said railroad company shall not charge the inhabitants of said Territory a greater rate of freight than the rates authorized by the laws of the State of Arkansas for services or transportation of the same kind, provided that passenger rates on said railroad shall not exceed three cents per mile. Congress hereby reserves the right to regulate the charges for freight and passengers on said railroad and messages on said telegraph and telephone lines until a State government shall be authorized to fix and regulate the cost of transportation of persons and freight within its respective limits by said railroad; but Congress expressly reserves the right to fix and regulate at all times the cost of such transportation by said railroad or said company whenever such transportation shall extend from one State into another, or shall extend into more than one State; provided

however, that the rates of such transportation of passengers, local or interstate, shall not exceed the rates above expressed; and provided further that said railroad company shall carry the mail at such price as Congress may by law provide, and until such rate is fixed by law the Postmaster General may fix the rate of compensation."

U. S. Statutes at Large, vol. 27, page 487;
Act of Congress, February 27, 1893.

The Indian Territory must therefore, for the purpose of this suit, be treated as if it were a State possessing all the powers and
65 attributes of any of the States comprising the Union.

The power of the State to prescribe rates for railroads engaged in domestic commerce is not absolute but must be exercised with due regard to the rights of the owners, or otherwise the power would be equivalent to that of confiscation of property without due process of law. Smyth *vs.* Ames, 169 U. S. 466. Mr. Justice Harlan, speaking for the court in that case says:

"We hold however, that the basis of all calculations as — the reasonableness of rates to be charged by a corporation maintaining a highway under legislative sanction must be the fair value of the property being used by it for the convenience of the public. And in order to ascertain that value the original cost of construction, the amount expended in permanent improvements, the amount and market value of its bonds and stock, the present as compared with the original cost of construction, the probable earning capacity of the property under particular rates prescribed by statute, and the sum required to meet operating expenses, are all matters for consideration, and are to be given such weight as may be just and right in each case. We do not say that there may not be other matters to be regarded in estimating the value of the property. What the company is entitled to ask is a fair return upon the value of that which it employs for the public convenience. On the other hand, what the public is entitled to demand is that no more be exacted from it for the use of a public highway than the services rendered by it are reasonably worth." 169 U. S. 546.

The railroad commission of the State in fixing rates must consider all these matters, and if the rate fixed for domestic traffic solely, is in disregard of these principles and if, upon a hearing it is found that the rates fixed by the commission are so low as to prevent a railroad company from earning an amount at least sufficient to pay the owners some profit, although it may be but small, it is the duty of the court to prevent the enforcement of such a tariff by the commission. Chicago, etc. R'y Co. *vs.* Minnesota, 134 U. S. 418; Chicago, etc. R'y *vs.* Wellman, 143 U. S. 339; Reagan *vs.* Farmers' Loan and Trust Company, 154 U. S. 363; Chicago etc. R'y Co. *vs.* Tompkins 176 U. S. 167.

66 To determine that question the commission must have the power to investigate all these matters. It would have to take into consideration the laws and regulations duly enacted by or in behalf of the Indian Territory, which in any way add to the cost of carrying on the business of a common carrier. It must make

allowance for the additional expense thus incurred by reason of enactments which, as has been held by the Supreme Court, the States have the power to impose under the Constitution of the United States, even as to trains engaged in interstate business. The State may, if it sees proper, enact laws requiring locomotive engineers to be examined and licensed by a State board, even in the case of an engineer operating a locomotive attached to a train running from a point in that State to points in another State. Smith *vs.* Alabama 124 U. S. 465. Nashville, etc. R'y Co. *vs.* Alabama, 128 U. S. 96. It may prohibit freight trains from running on the Sabbath, although in effect thereby preventing freight trains carrying interstate freight from running. Hennington *vs.* Georgia, 163 U. S. 299. It may regulate the speed of railroad trains within the limits of cities, regardless of the fact whether the train is used for interstate commerce or not. Erb *vs.* Morasch, 177 U. S. 584. It may regulate and prohibit limitations in bills of lading issued in the State by a railroad company, although the freight is to be transported to other States. M., K. & T. R'y *vs.* McCann 174, U. S. 580. It may by legislation regulate the heating of passenger cars, although used in interstate transportation. Railroad Co. *vs.* New York. 165 U. S. 628. It may require a reasonable number of passenger trains to stop at cities of a certain size, although such trains may be engaged in interstate transportation. Railway Co. *vs.* Ohio. 173
67 U. S. 285 Gadsden *vs.* Minnesota 166 U. S. 416. The law-making power of the State may require a breakman for every freight car; it may prohibit what is called "double headers;" it may limit the hours of the employés of railroad corporations and enact other reasonable regulations; Stone *vs.* Trust Co. 116 U. S. 307, 334 and perhaps in consideration of these additional burdens imposed on the railroads, allow a greater charge for the transportation of passengers, as well as freight through its territory than neighboring States in which no such burdens are imposed. But how is the commission of one State to take into consideration these laws and regulations of other States? Yet in the case at bar it is attempted by the defendants to regulate charges without such investigation and they seek to fix the rate of transportation over complainant's road as to shipments which are carried less than half of the distance in this State, and the rest in the Indian Territory. No State has the power to authorize a commission to fix rates arbitrarily with no power in the courts to stay the hands of the commission if it chooses to establish rates that are unequal and unreasonable. In Chicago, etc., Co., *vs.* Minnesota, *supra*, the State has attempted to invest the railroad commission with such a power and the supreme court of the State has upheld the act but on appeal to the Supreme Court of the United States that court held:

"This being the construction of the statute by which we are bound in considering the present case we are of opinion that so construed it conflicts with the Constitution of the United States in the particulars complained of by the railroad company. It deprives the company of its right to a judicial investigation by due process of law under the forms and with the machinery provided by the wis-

dom of successive ages for the investigation judicially of the truth of a matter in controversy and substitutes therefor as an absolute finality the action of a railroad commission which in view of the powers conceded to it by the State court cannot be regarded as clothed with judicial functions or possessing the machinery of a court of justice."

68 The rate from a certain point to another is a unit. In Wabash, etc., Railway Company *vs.* Illinois, *supra*, the court says:

"A citizen of New York has goods which he desires to have transported by the railroad companies from that city to the interior of the State of Illinois. A continuous line of rail over which a car loaded with these goods can be carried, and is carried habitually, connects the place of shipment with the place of delivery. He undertakes to make a contract with a person engaged in the carrying business at the end of this route from whence the goods are to start, and he is told by the carrier, 'I am free to make a fair and reasonable contract for this carriage to the line of the State of Illinois, but when the car which carries these goods is to cross the line of that State, pursuing at the same time this continuous track, I am met by a law of Illinois which forbids me to make a free contract concerning this transportation within that State, and subjects me to certain rules by which I am to be governed as to the charges which the same railroad company in Illinois may make or has made, with reference to other persons and other places of delivery.' So that while that carrier might be willing to carry these goods from the city of New York to the city of Peoria at the rate of fifteen cents per hundred pounds, he is not permitted to do so because the Illinois Railroad Company has already charged at the rate of twenty-five cents per hundred pounds for carriage to Gilman, in Illinois, which is eighty miles shorter than the distance to Peoria.

"So also, in the present case, the owner of corn, the principal product of the country desireing to transport it from Peoria in Illinois to New York, finds a railroad company willing to do this at the rate of fifteen cents per hundred pounds for a car-load, but is compelled to pay at the rate of twenty-five cents per hundred pounds because the railroad company has received from a person residing at Gilman twenty-five cents per hundred pounds for the transportation of a car-load of the same class of freight over the same line of road from Gilman to New York. This is the result of the statute of Illinois, in its endeavor to prevent unjust discrimination, as construed by the supreme court of that State. The effect of it is, that whatever may be the rate of transportation per mile charged by the railroad company from Gilman to Sheldon a distance of twenty-three miles in which the loading and unloading of the freight is the largest expense incurred by the railroad company, the same rate per mile must be charged from Peoria to the city of New York.

"The obvious injustice of such a rule as this, which railroad companies are by heavy penalties compelled to conform to, in regard to commerce among the States, when applied to transportation which includes Illinois in a long line of carriage through several States

shows the value of the constitutional provision which confides the power of regulating interstate commerce to the Congress of
69 the United States, whose enlarged view of the interests of all the States, and of the railroads concerned, better fits it to establish just and equitable rules."

Counsel for the defendants rely solely upon the decision of the Supreme Court in Lehigh Valley Railroad Company *vs.* Pennsylvania 145 U. S. 192 and the decisions of the supreme courts of the States of Missouri, North Carolina and Iowa, in Sawell *vs.* Kansas City, etc. Rai-way Company 119 *No.* 222; State *vs.* Western Union Telegraph Co. 113 N. C. 213; and Campbell *vs.* C. M. & St. P. R. R. Co. 86 Iowa, 587.

The decisions in the latter cases are based upon what was supposed to have been determined in the Lehigh Valley case it is therefore only necessary to examine that case for that decision is conclusive in this court in the issues involved and before the court.

If everything said by the learned Chief Justice, in his opinion in that case is applicable to this cause the demurrer to this bill must be sustained, but a careful examination of that opinion clearly shows that those parts of the opinion on which defendants rely were not necessary for the determination of the issues involved in that case, and must be considered as *obiter dicta:* The question before the court in the Lehigh Valley case is thus stated by the learned Chief Justice, who delivered the opinion of the court:

"The receipts named in class two are confined to that part of the transportation from Mauch Chunk to Phillipsburg and the taxation to the mileage wholly within the State of Pennsylvania; and the question is whether this taxation in respect of such receipts from freight and passengers carried by continuous transportation to Philadelphia from Mauch Chunk by way of Trenton New Jersey amounts to a regulation of interstate commerce." 145 U. S. 200.

70 And in another part of the opinion he says:

"The tax under consideration was determined in respect of receipts for the proportion of the transportation within the State but the contention is that this could not be done because the transportation was an entire thing, and in its course passed through another State than that of the origin and destination of the particular freight and passengers." Page 201.

And the learned Chief Justice calls special attention to the fact that:

"It should be remembered that the question does not arise as to the power of any other State than the State of the terminal, nor as to the taxation upon the property of the company situated elsewhere than in Pennsylvania, nor as to the regulation by Pennsylvania of the operations of this or any other company elsewhere, but it is simply whether, in the carriage of the freight between two points in one State, the mere passage over the soil of another State renders that business foreign, which is domestic." Page 202.

That case therefore must be limited as an authority to the questions before the court, and to no others. If this view is correct, it necessarily follows that the case at bar is clearly distinguishable from the Lehigh Valley case.

In Pacific Coast S. S. Co. *vs.* Railroad Commissioners, 9 Sawyer, 253; S. C. 18 Fed. 10, Mr. Justice Field says:

"To bring the transportation within the control of the State as a part of its domestic commerce, the subject transported must be within the entire voyage under the exclusive jurisdiction of the State. If the ships of the plaintiffs carried any persons or merchandise between parts of the State not going out, on their voyage between those ports, of the jurisdiction of the State, and the persons or merchandise carried not coming from any other State or foreign country, or going to another State or country, the transportation commencing and ending in the State then to that extent they would be engaged in commerce purely domestic, and to that extent the railroad commissioners might have jurisdiction to regulate fares and freight for transportation of the vessels." 18 Fed. 13.

In Hall *vs.* De Guir, 95 U. S., 485, the validity of a civil rights statute of the State of Louisiana *do* so far as it affected passengers traveling in a steamboat on the Mississippi river between ports in *in* that State, was held void as a burden upon interstate

71 commerce.

The facts in that case were, that a person of color took passage upon a boat plying as a regular packet for the transportation of freight and passengers between New Orleans, in the State of Louisiana, and Vicksburg in the State of Mississippi, touching at the intermediate landings both within and without Louisiana, from a point in Louisiana to another in the same State. Being refused accommodation on account of her color, in the cabin specially set apart for white persons, she instituted an action for damages under the Louisiana law, and the court held:

"There can be no doubt that the exclusive power has been conferred upon Congress in respect to the regulation of commerce among the several States. The River Mississippi passes through and along the borders of ten different States, and its tributaries reach many more. The commerce upon these waters is immense, and its regulation clearly a matter of national concern. If each State was at liberty to regulate the conduct of carriers while within its jurisdiction the confusion likely to follow could not but be productive of great inconvenience and unnecessary hardship. Each State could provide for its own passengers and regulate the transportation of its own freight, regardless of the interests of others. Nay more it could prescribe rules by which the carrier must be governed within the State in respect to passengers and property brought from without. On one side of the river or its tributaries he might be required to observe one set of rules and on the other another. Commerce cannot flourish in the midst of such embarrassments. No carrier of passengers can conduct his business with satisfaction to himself, or comfort to those employing him, if on one side of a State line his passengers, both white and colored must be permitted to occupy the same cabin, and on the other be kept separate. Uniformity in the regulations by which he is to be governed from one end to the other of his route is a necessity in his business, and to secure it Congress, which is untrammelled by State lines, has been invested with the

exclusive legislative power of determining what regulations shall be. If this statute can be enforced against those engaged in interstate commerce, it may be as well as those engaged in foreign; and the master of a ship clearing from New Orleans for Liverpool, having passengers on board, would be compelled to carry all,
72 white and colored, in the same cabin during his passage down the river, or be subject to an action for damages, 'exemplary as well as actual,' by any one who felt himself aggrieved, because he had been excluded on account of his color.

"This power of regulation may be exercises without legislation as with it. By refraining from action Congress, in effect adopts as its own regulations those which the common law or the civil law, where that prevails, has provided for the government of such business, and those which the States, in the regulation of their domestic concerns, have established affecting commerce, but not regulating it within the meaning of the Constitution. In fact, congressional legislation is only necessary to cure defects in existing laws, as they are discovered, and to adopt such laws to new developments of trade. As was said by Mr. Justice Field, speaking for the court in Welton *vs.* The State of Missouri, 91 U. S. 282, 'inaction (by Congress) is equivalent to a declaration that interstate commerce shall remain free and untrammelled.' Applying that principle to the circumstance of this case, congressional inaction left Benson at liberty to adopt such reasonable rules and regulations for the disposition of passengers upon his boat, while pursuing her voyage within Louisiana or without, as seemed to him most for the interest of all concerned. The statute under which this suit is brought, as construed by the State court, seeks to take away from him the power so long as he is within Louisiana; and while recognizing to the fullest extent the principle which sustains a statute unless its unconstitutionality is clearly established, we think this statute to the extent that it requires those engaged in the transportation of passengers among the States to carry colored passengers in Louisiana in the same cabin with whites, is unconstitutional and void. If the public good requires such legislation, it must come from Congress, and not from the States.

"We confine our decision to the statute in its effect upon foreign and interstate commerce, expressing no opinion as to its validity in any other respect." 95 U. S. 489–491.

It will be noticed that the court expressly declined to consider the power of Congress over commerce on navigable waters, but rested its decision solely on the commerce clause of the Constitution.

Applying these principles to the case at bar, the contention of the defendants cannot be sustained, for the trains carrying the freight between the points named traverse for the largest part of the voyage outside of the State of Arkansas.

The Interstate Commerce Commission had the identical
73 question before it on two occasions and reached the conclusion that its jurisdiction extended over such shipments to the exclusion of the commissions of the States. The New Orleans Cotton Exchange *vs.* Cincinnati etc. R. R. Co. 2 Interstate

Commerce Comm. Rep. 375; Milk Producers' Association *vs.* Railroads 7 Interstate Commerce Rep. 92, 160. The later case was determined since the decision in the Lehigh Valley case which was by the commission distinguished after full consideration from a case like this.

In State *vs.* Chicago, etc. Railway Co. 40 Minn. 267, the facts were identical with those in this case, and the court says:

"The order prescribing rates, and to enforce the observance of which is the object of this proceeding, applies to the entire route from Duluth to Mankato—a large part of which indeed, the greater part of which—lies beyond the boundaries of our State, and within the territory of another sovereignty. These rates are for the continuous carriage of freight over the entire route including the transit of 148 miles through the State of Wisconsin. The order is as applicable to that part of the line as to that which is within our own State, and can only be sustained upon the theory that the railroad and warehouse commission of the State of Minnesota has authority to determine what charges may be made for the transportation of freight by a common carrier through the State of Wisconsin, provided only that the carrier receivers this property within the State, and is to carry it through the foreign State to a destination within our own borders.

"In view of the above decisions of the Supreme Court of the United States, that the transportation of freight by a common carrier, apart from consideration of contract concerning the property as *as* between the shipper and the consignee, is a subject of 'commerce,' to which the Constitution applies, it is not a matter of controlling importance that the consignor and the consignee, or place of shipment and destination be within the same State, if the transportation is through a foreign State. Assuming that the Constitution places within the exclusive control of Congress the subject of transportation among the several States, let it suppose that a shipment is made from Duluth to Winona—both cities being within our State but upon the borders of Wisconsin—by route wholly within the latter State except, the inconsiderable distance of the depot grounds in those cities from the State line can it be said that this carriage of perhaps 200 miles through the State of Wisconsin, and of a mile
74 or two within our own borders, is domestic transportation and commerce, as distinguished from that which, under the Constitution, is to be deemed as being 'among the several States'? The Constitution, as interpreted by the court whose decisions upon this subject are final, has placed under the exclusive regulation of Congress the subject of transportation among the States, so far, among other things as relates to the matter of charges, in order that it may be protected from conflicting and adversely discriminating State legislation. See authorities above cited. Is not a case such as we have supposed, or the case now before us, transportation among the States, within this purpose of the Constitution, as really would be a shipment and transportation of goods from New York, Chicago, or Milwaukee to Minnesota, as to which unquestionably, under the decisions above cited, Congress and not the several States would have the power to regulate? We are unable to state any principle

which supports the relator's claim of jurisdiction to determine what charges may be made for the transportation of freight through the State of Wisconsin. Whether the result would have been different if the order had prescribed rates only with respect to some of the route as is within our own State we do not decide. The mere fact that Duluth and Mankato are both in this State, and that a part of the line of road of this respondent is also here, and operated under our law, cannot authorize our State authorities to regulate the operation of the 148 miles of road which is wholly within the State of Wisconsin, which there exists, and is managed, of course, under the laws of that State subject to the limitations as the National Constitution may impose."

In Gibbons *vs.* Ogden, Chief Justice Marshall in defining the word "among" in the commerce clause of the Constitution says:

"Comprehensive as the word 'among' is, it may very properly be restricted to that commerce which concerns more States than one. The phrase is not one which would probably have been selected to indicate the completely interior traffics of a State, because it is not an apt phrase for that purpose; and the enumeration of the particular classes of commerce to which the power was to be extended, would not have been made, had the intention been to extend the power to every description." 9 Wheat. 194.

The test laid down by the Chief Justice as to what is not commerce among the States is:

"That commerce which is completely internal; which is carried on between man and man in a State, or between different
75 parts of the same State, and which does not extend to or affect other States." 9 Wheat. 194.

The court is of the opinion that upon the allegations contained in the bill, complainant is entitled to the relief asked, and the demurrer to the bill is overruled.

(Signed) JACOB TRIEGER, *Judge.*

Filed February 5th, 1901.

W. P. FEILD, *Clerk.*

And on the same day in accordance with the above opinion the following decree was entered:

In the Circuit Court of the United States for the Western Division of the Eastern District of Arkansas.

THE KANSAS CITY SOUTHERN RAILWAY COMPANY
vs.
FELIX M. HANLEY, JEREMIAH G. WALLACE, and HENRY W. WELLS, Commissioners and Members of the Railroad Commission of the State of Arkansas. } 1336.

Final Decree.

On the 5th day of February, 1901, this cause having come on for hearing upon the bill of complaint and the demurrer of defendant

to the entire bill of complaint; having been argued by counsel on the part of the complainant and defendants respectively, and submitted to the court, upon the pleadings, viz: the bill of complaint and the demurrer of defendants thereto, and the arguments and briefs of counsel; and the court having duly considered the same and being fully advised in the premises, it is hereby ordered, adjudged and decreed that the demurrer of the defendants and each of them to
76 the bill of complaint, be and the same is hereby overruled, and that complainant have and recover its costs upon said demurrer incurred and expended, and have execution therefor; and thereupon on the same day defendants electing in open court to stand upon their demurrer, and admitting in open court that the facts were truly and correctly stated and set forth in the bill of complaint, and declining to plead further and announcing in open court that they elected to stand upon the demurrer to the bill of complaint; thereupon the case was submitted to the court for final decree upon the bill of complaint and the demurrer of defendants thereto, and the court being fully advised in the premises, and having heard the arguments of counsel for complainants and defendants, and having considered the same and their briefs submitted in support thereof, it is hereby ordered adjudged and decreed by the court, that the temporary injunction heretofore issued herein be and the same is hereby made perpetual, and that the defendants herein, Felix M. Hanley, Jeremiah G. Wallace and Henry W. Wells, commissioners and members of the railroad commission of the State of Arkansas, and each of them and as such commissioners, their successors in office their agents and attorneys be and are hereby perpetually enjoined and restrained from in any manner interfering with or undertaking to exercise any authority whatsoever over any charges, tariffs or rates for freight made by complainant herein The Kansas City Southern Railway Company, for shipments from any point in the State of Arkansas, to any other point in the State of Arkansas or to any point in any other State or Territory, when any portion of such transportation shall be through the Indian Territory, or any other State than the State of Arkansas, and from undertaking to fix or determine
77 any such rates, tariffs or charges, and from undertaking to compel complainant The Kansas City Southern Railway Company, to in any manner respect or comply with rates, tariffs or charges for such shipments and transportation of freight as are now or may hereafter be made by said defendants acting in their official capacity, and from entertaining, hearing or determining any controversy between citizens of the State of Arkansas and said complainant The Kansas City Southern Railway Company, on account of any such rates, tariffs or charges for such shipments of freight made by the said complainant The Kansas City Southern Railway Company, and from citing complainant, The Kansas City Southern Railway Company to appear to a answer thereto or to any complaints or charges made by such citizens to or before said defendants acting in their official capacity on account of any such rates, tariffs or charges, or violations thereof and from investigating, directing or instituting any prosecution for penalties or otherwise

against said complainant The Kansas City Southern Railway Company, on account of such charges or violations thereof, and from making or attempting to make, any order or orders with reference thereto, or any of the foregoing matters and things herein enjoined and restrained.

It is further ordered adjudged and decreed that complainant have and recover its costs herein laid out and expended and have execution therefor.

(Signed) JACOB TRIEBER, *Judge.*

78 And on March 18th, 1901, the following proceedings were had to wit:

KANSAS CITY SOUTHERN RAILWAY COMPANY
vs. } 1336.
FELIX M. HANLEY ET AL.

Come the defendants by Winchester and Martin Esqs., their solicitors and file herein their assignment of errors and prayer for appeal.

Which assignment of errors is as follows:

United States Circuit Court for the Western Division of the Eastern District of Arkansas.

KANSAS CITY SOUTHERN RAILWAY COMPANY
vs.
FELIX M. HANLEY, JEREMIAH G. WALLACE, and HENRY W. WELLS, Commissioners and Members of the Railroad Commission of Arkansas. } 1336.

Assignment of Errors.

1. The court erred in overruling defendants' demurrer to the bill herein.

2. The court erred in rendering a decree against defendants in this cause.

(Signed) WINCHESTER & MARTIN,
Attorneys for Defendants.

Which prayer for appeal is as follows:

79 United States Circuit Court for the Western Division of the Eastern District of Arkansas.

KANSAS CITY SOUTHERN RAILWAY COMPANY
vs.
FELIX M. HANLEY, JEREMIAH G. WALLACE, HENRY W. Wells, Commissioners and Members of the Railroad Commission of Arkansas. } 1336.

Prayer for Appeal.

Defendants pray for an appeal to the United States Supreme Court from the decree rendered in this cause.

(Signed) WINCHESTER & MARTIN,
Attorneys for Defendants.

Appeal granted upon execution of a bond as required by law in the sum of two hundred and fifty dollars returnable in thirty days.

June 17th, 1901.

(Signed) JACOB TRIEBER,
U. S. Dist. — East. Dist. of Ark.

80 UNITED STATES OF AMERICA, }
Western Division of the Eastern District of Arkansas. }

Be it remembered, that at a circuit court of the United States of America, in and for the western division of the eastern district of Arkansas begun and holden on Monday the 1st day of April anno Domini, one thousand nine hundred and one, at the United States court-room, in the city of Little Rock, Arkansas, the Honorable Jacob Trieber, U. S. district judge, presiding and holding said court, the following proceedings were had, to wit:

JUNE 17TH, 1901.

KANSAS CITY SOUTHERN RAILWAY COMPANY
vs.
FELIX M. HANLEY ET AL. } 1336.

Come the defendants by Winchester and Martin, Esqs., their solicitors; and it appearing to the court that the prayer for appeal and assignment of errors were heretofore filed herein by the defendants on March 18th, 1901, but that no action was taken thereon it is now ordered that an appeal be and is hereby allowed to the United States Supreme Court from the decree rendered herein on February 5th, 1901, and that the amount of the bond on said appeal is hereby fixed at the sum of two hundred and fifty —, which bond is now presented and by the court approved.

Which bond is in words and figures following, to wit:

81 United States Circuit Court, Western Division of the Eastern District of Arkansas.

THE KANSAS CITY SOUTHERN RAILWAY COMPANY
vs.
FELIX M. HANLEY, JEREMIAH G. WALLACE, and HENRY W. WELLS, Commissioners and Members of the Railroad Commission of the State of Arkansas. } 1336.

Know all men by these presents: That we Felix M. Hanley, Jeremiah G. Wallace and Abner Gaines commissioners and members of the railroad commission of Arkansas, and the undersigned sureties, are held and firmly bound unto The Kansas City Southern Railway Company the complainant in the full and just sum of two hundred and fifty dollars to be paid to the Kansas City Southern Railway Company its successors and assigns forever; to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators jointly and severally by these presents.

Sealed with our seals and dated this 18th, day of March, 1901.

Whereas lately at the October term A. D. 1900 of the circuit court of the United States for the western division of the eastern district of Arkansas, in a suit pending in said court, between said Kansas City Southern Railway Company complainant and the said Felix M. Hanley *et al.* defendants the demurrer of the said defendants to the bill of complainants was overruled and a decree was rendered against the said defendants and the said Felix M. Hanley *et als.* have obtained an appeal of the said court to reverse the decree in the aforesaid suit, and a citation directed to the Kansas City Southern Railway Company citing and admonishing it to be and appear in the United States Supreme Court, sixty days after date of said citation.

82 Now the condition of the above obligation is such, that if the said Felix M. Hanley, Jeremiah G. Wallace, Abner Gaines, commissioners and members of the railroad commission of Arkansas, shall prosecute said appeal to effect, and answer all damages and costs if they fail to make good their plea, then the above obligation to be void, else to remain in full force and virtue.

(Signed) FELIX M. HANLEY,
ABNER GAINES,
Railroad Commissioners.
W. J. ECCOLS.
THOMAS C. DAVIS.

Approved:
JACOB TRIEBER, *Judge.*

And on June 25th, 1901, the following proceedings were had, to wit:

KANSAS CITY SOUTHERN RAILWAY COMPANY
vs.
FELIX M. HANLEY ET AL. } 1336.

Come the defendants by Winchester and Martin, Esqs., their solicitors and file herein their citation to the complainant which is signed by the court and service thereof acknowledged by the complainant.

Which citation is as follows:

83 The United States of America to the Kansas City Southern Railway Company, Greeting:

You are hereby cited and admonished to be and appear in the United States Supreme Court in the city of Washington, D. C., thirty days from and after the day this citation bears date, pursuant to an appeal, filed in the clerk's office of the circuit court of the United States for the western division of the eastern district of Arkansas, wherein Felix M. Hanley, Jeremiah G. Wallace and Henry W. Wells, commissioners and members of the railroad commission of Arkansas, — appellants and you are appellee, to show cause, if any there be, why the decree rendered against the said appellants, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable Jacob Trieber judge of the circuit court of the United States for the eastern district of Arkansas, this 17th day of June in the year of our Lord one thousand nine hundred and one.

JACOB TRIEBER,
United States Distr. Judge, Presiding in Circuit Court for the Eastern District of Arkansas.

Service acknowledged.

LATHROP, MORROW, FOX & MOORE,
C. W. LUCAS,
READ AND McDONOUGH,
Attorneys for Appellee.

Endorsed: Filed June 25, 1901. W. P. Feild, clerk.

84 UNITED STATES OF AMERICA, }
Western Division of the Eastern District of Arkansas. }

I, W. P. Feild, clerk of the circuit court of the United States for the western division of the eastern district of Arkansas, in the eighth circuit, hereby certify that the foregoing writings annexed to this certificate are true, correct and compared copies of the originals remaining of record in my office, and constitute a true copy of the record and the assignment of errors and of all proceedings in the case of The Kansas City Southern Railway Co. *vs.* Felix M. Hanley, *et al.*, &c.

The Seal of the Circuit Court of East. Dist. Ark., Western Division, U. S. A.

In witness whereof, I have hereunto set my hand and the seal of said court, this third day of July, in the year of our Lord, one thousand nine hundred and one and of the Independence of the United States of America, the one hundred and twenty-fifth.

Attest:

W. P. FEILD, *Clerk.*

Endorsed on cover: File No. 18,221. E. Arkansas C. C. U. S. Term No. 368. Felix M. Hanley, Jeremiah G. Wallace, and Henry W. Wells, commissioners and members of the railroad commission of Arkansas, appellants, *vs.* The Kansas City Southern Railway Company. Filed July 13th, 1901.

1018